

**DIVISION 17. OFFENSES AND PROSECUTION****CHAPTER 1. OFFENSES****Article 1. Violation of Code****Infractions**

40000.1. Except as otherwise provided in this article, it is unlawful and constitutes an infraction for any person to violate, or fail to comply with any provision of this code, or any local ordinance adopted pursuant to this code.

Added Ch. 1178, Stats. 1971. Operative May 3, 1972.

**Felonies and Offenses Punishable Either as Felonies or Misdemeanors; Violation of Court Order Punishable as Contempt**

40000.3. A violation expressly declared to be a felony, or a public offense which is punishable in the discretion of the court, either as a felony or misdemeanor, or a willful violation of a court order which is punishable as contempt pursuant to subdivision (a) of Section 42003, is not an infraction.

Amended Ch. 1162, Stats. 1973. Effective January 1, 1974.

**Misdemeanors**

40000.5. A violation of any of the following provisions shall constitute a misdemeanor, and not an infraction:

Section 20, relating to false statements.

Section 27, relating to impersonating a member of the California Highway Patrol.

Section 31, relating to giving false information.

Paragraph (3) of subdivision (a), or subdivision (b), or both, of Section 221, relating to proper evidence of clearance for dismantling.

Amended Sec. 3, Ch. 316, Stats. 1999. Effective January 1, 2000.

**Misdemeanors**

40000.6. A violation of any of the following is a misdemeanor and not an infraction:

(a) Subdivision (b) of Section 1808.1, relating to enrollment in the pull notice system.

(b) Subdivision (f) of Section 1808.1, relating to employment of disqualified drivers.

Amended Ch. 928, Stats. 1991. Effective October 14, 1991.

**Misdemeanors**

40000.7. (a) A violation of any of the following provisions is a misdemeanor, and not an infraction:

(1) Section 2416, relating to regulations for emergency vehicles.

(2) Section 2800, relating to failure to obey an officer's lawful order or submit to a lawful inspection.

(3) Section 2800.1, relating to fleeing from a peace officer.

(4) Section 2801, relating to failure to obey a firefighter's lawful order.

(5) Section 2803, relating to unlawful vehicle or load.

(6) Section 2813, relating to stopping for inspection.

(7) Subdivisions (b), (c), and (d) of Section 4461 and subdivisions (b) and (c) of Section 4463, relating to disabled person placards and disabled person and disabled veteran license plates.

(8) Section 4462.5, relating to deceptive or false evidence of vehicle registration.

(9) Section 4463.5, relating to deceptive or facsimile license plates.

(10) Section 5105.5, relating to environmental license plates.

(11) Section 5500, relating to the surrender of registration documents and license plates before dismantling may begin.

(12) Section 5506, relating to the sale of a total loss salvage vehicle, or of a vehicle reported for dismantling by a salvage vehicle rebuilder.

(13) Section 5753, relating to delivery of certificates of ownership and registration when committed by a dealer or any person while a dealer within the preceding 12 months.

(14) Section 5901, relating to dealers and lessor-retailers giving notice.

(15) Section 5901.1, relating to lessors giving notice and failure to pay fee.

(16) Section 8802, relating to the return of canceled, suspended, or revoked certificates of ownership, registration cards, or license plates, when committed by any person with intent to defraud.

(17) Section 8803, relating to return of canceled, suspended, or revoked documents and license plates of a dealer, manufacturer, remanufacturer, transporter, dismantler, or salesman.

(b) This section shall become operative on January 1, 2001.

Amended Sec. 10, Ch. 670, Stats. 2002. Effective January 1, 2003.

**Misdemeanors**

40000.8. A violation of any of the following provisions is a misdemeanor, and not an infraction:

Section 9872, relating to the registration of vessels.

Section 9872.1, relating to unidentified vessels.

Amended Ch. 922, Stats. 1991. Effective January 1, 1992.

**Misdemeanors**

40000.9. A violation of any of the following provisions shall constitute a misdemeanor, and not an infraction:

Section 10501, relating to false report of vehicle theft.

Sections 10750 and 10751, relating to altered or defaced vehicle identifying numbers.

Section 10851.5, relating to theft of binder chains.

Sections 10852 and 10853, relating to injuring or tampering with a vehicle.

Section 10854, relating to unlawful use of stored vehicle.

Added Ch. 1178, Stats. 1971. Operative May 3, 1972.

**Misdemeanors**

40000.11. A violation of any of the following provisions is a misdemeanor, and not an infraction:

(a) Division 5 (commencing with Section 11100), relating to occupational licensing and business regulations.

(b) Section 12500, subdivision (a), relating to unlicensed drivers.

(c) Section 12515, subdivision (b), relating to persons under 21 years of age driving, and the employment of those persons to drive, vehicles engaged in interstate commerce or transporting hazardous substances or wastes.

(d) Section 12517, relating to a special driver's certificate to operate a schoolbus or school pupil activity bus.

(e) Section 12519, subdivision (a), relating to a special driver's certificate to operate a farm labor vehicle.

(f) Section 12520, relating to a special driver's certificate to operate a tow truck.

(g) Section 12804, subdivision (d), relating to medical certificates.

(h) Section 12951, subdivision (b), relating to refusal to display license.

(i) Section 13004, relating to unlawful use of identification card.

(j) Section 13004.1, relating to identification documents.

(k) Sections 14601, 14601.1, 14601.2, and 14601.5, relating to driving with a suspended or revoked driver's license.

(l) Section 14604, relating to unlawful use of a vehicle.

(m) Section 14610, relating to unlawful use of a driver's license.

(n) Section 14610.1, relating to identification documents.

(o) Section 15501, relating to use of false or fraudulent license by a minor.

Amended Sec. 7, Ch. 922, Stats. 1995. Effective January 1, 1996. Supersedes Sec. 5, Ch. 101.

### Misdemeanors

40000.13. A violation of any of the following provisions is a misdemeanor, and not an infraction:

(a) Section 16560, relating to interstate highway carriers.

(b) Sections 20002 and 20003, relating to duties at accidents.

(c) Section 21200.5, relating to riding a bicycle while under the influence of an alcoholic beverage or any drug.

(d) Section 21651, subdivision (b), relating to wrong-way driving on divided highways.

(e) Section 21655.9, subdivision (c), relating to illegal use of decals, labels, or other identifiers.

(f) Section 22520.5, a second or subsequent conviction of an offense relating to vending on or near freeways.

(g) Section 22520.6, a second or subsequent conviction of an offense relating to roadside rest areas and vista points.

(h) This section shall remain in effect only until ( ) ***January 1, 2011, or only until the date that the Secretary of State receives the notice from the Director of Transportation as described in Section 5205.5, whichever occurs first, and as of that date is repealed.***

Amended and repealed Sec. 4, Ch. 330, Stats. 1999. Effective January 1, 2000. Repeal operative January 1, 2008.

Amended Sec. 5, Ch. 614, Stats. 2006. Effective January 1, 2007.

The 2006 amendment added the italicized material, and at the point(s) indicated, deleted the following "January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date."

**NOTE: The preceding section is repealed January 1, 2011, or on the date that the Secretary of State receives the notice from the Director of Transportation as described in Section 5205.5, whichever occurs first, at which time the following section becomes operative.**

40000.13. A violation of any of the following provisions is a misdemeanor, and not an infraction:

(a) Section 16560, relating to interstate highway carriers.

(b) Sections 20002 and 20003, relating to duties at accidents.

(c) Section 21200.5, relating to riding a bicycle while under the influence of an alcoholic beverage or any drug.

(d) Section 21651, subdivision (b), relating to wrong-way driving on divided highways.

(e) Section 22520.5, a second or subsequent conviction of an offense relating to vending on or near freeways.

(f) Section 22520.6, a second or subsequent conviction of

an offense relating to roadside rest areas and vista points.

(g) This section shall become operative on ( ) ***January 1, 2011, or on the date that the Secretary of State receives the notice from the Director of Transportation as described in Section 5205.5, whichever occurs first.***

Added Sec. 5, Ch. 330, Stats. 1999. Effective January 1, 2000.

Amended Sec. 6, Ch. 614, Stats. 2006. Effective January 1, 2007. Operative January 1, 2011.

The 2006 amendment added the italicized material, and at the point(s) indicated, deleted the following "January 1, 2008"

### Misdemeanors

40000.14. A violation of subdivision (b) or (c) of Section 21367 is an infraction, except as follows:

(a) A willful violation is a misdemeanor.

(b) A willful violation committed in a manner exhibiting a wanton disregard for the safety of persons is a misdemeanor punishable by imprisonment in the county jail for not more than one year.

Added Ch. 748, Stats. 1986. Effective January 1, 1987.

### Misdemeanors

40000.15. A violation of any of the following provisions shall constitute a misdemeanor, and not an infraction:

***Subdivision (g), (j), (k), (l), or (m) of Section 22658, relating to unlawfully towed or stored vehicles.***

Sections 23103 and 23104, relating to reckless driving.

Section 23109, relating to speed contests or exhibitions.

Subdivision (a) of Section 23110, relating to throwing at vehicles.

Section 23152, relating to driving under the influence.

Subdivision (b) of Section 23222, relating to possession of marijuana.

Subdivision (a) or (b) of Section 23224, relating to persons under 21 years of age knowingly driving, or being a passenger in, a motor vehicle carrying any alcoholic beverage.

Section 23253, relating to ( ) ***directions on toll highways or vehicular crossings.***

Section 23332, relating to trespassing.

Section 24002.5, relating to unlawful operation of a farm vehicle.

Section 24011.3, relating to vehicle bumper strength notices.

Section 27150.1, relating to sale of exhaust systems.

Section 27362, relating to child passenger seat restraints.

Section 28050, relating to true mileage driven.

Section 28050.5, relating to nonfunctional odometers.

Section 28051, relating to resetting odometers.

Section 28051.5, relating to devices to reset odometers.

Subdivision (d) of Section 28150, relating to possessing four or more jamming devices.

Amended Sec. 2, Ch. 493, Stats. 1998. Effective January 1, 1999.

Amended Sec. 190, Ch. 83, Stats. 1999. Effective January 1, 2000.

Amended Sec. 6, Ch. 873, Stats. 2000. Effective January 1, 2001.

Amended Sec. 6, Ch. 609, Stats. 2006. Effective January 1, 2007.

The 2006 amendment added the italicized material, and at the point(s) indicated, deleted the following "officers"

### Misdemeanor

40000.16. A second or subsequent violation of Section 23114, relating to preventing the escape of materials from vehicles, occurring within two years of a prior violation of that section is a misdemeanor, and not an infraction.

Amended Sec. 32, Ch. 945, Stats. 1997. Effective January 1, 1998.

**Misdemeanors**

40000.18. A violation of subdivision (b) of Section 31401 or Section 31402 or 31403, relating to farm labor vehicles, is a misdemeanor and not an infraction.

Added Ch. 613, Stats. 1988. Effective January 1, 1989.

**Misdemeanors**

40000.19. A violation of any of the following provisions is a misdemeanor, and not an infraction:

(a) Section 31303, relating to transportation of hazardous waste.

(b) Division 14 (commencing with Section 31600), relating to transportation of explosives.

(c) Division 14.1 (commencing with Section 32000), relating to the transportation of hazardous material.

(d) Division 14.3 (commencing with Section 32100), relating to transportation of inhalation hazards.

(e) Division 14.5 (commencing with Section 33000), relating to transportation of radioactive materials.

(f) Division 14.7 (commencing with Section 34001), relating to flammable liquids.

Amended Ch. 1384, Stats. 1988. Effective January 1, 1989.

**Misdemeanors**

40000.21. A violation of any of the following provisions is a misdemeanor, and not an infraction:

(a) Subdivision (a) of Section 34506, relating to the hours of service of drivers.

(b) Subdivision (b) of Section 34506, relating to the transportation of hazardous materials.

(c) Subdivision (c) of Section 34506, relating to schoolbuses.

(d) Subdivision (d) of Section 34506, relating to youth buses.

(e) Section 34505 or subdivision (e) of Section 34506, relating to tour buses.

(f) Section 34505.5 or subdivision (f) of Section 34506, relating to vehicles described in subdivisions (a) to (g), inclusive, of Section 34500.

(g) Subdivision (a) of Section 34501.3, relating to unlawful scheduling of runs by motor carriers.

(h) Subdivision (g) of Section 34506, relating to school pupil activity buses.

(i) Subparagraph (D) of paragraph (4) of subdivision (a) of Section 34505.9, relating to intermodal chassis.

Amended Sec. 4, Ch. 340, Stats. 1998. Effective August 24, 1998.

**Misdemeanors**

40000.22. (a) A violation of subdivision (e) of Section 34501, subdivision (f) of Section 34501.12, or subdivision (c) of Section 34501.14, relating to applications for inspections, is a misdemeanor and not an infraction.

(b) A violation of Division 14.85 (commencing with Section 34600), relating to motor carriers of property, is a misdemeanor and not an infraction.

Amended Sec. 54, Ch. 1042, Stats. 1996. Effective September 29, 1996.

**Misdemeanors**

40000.23. A violation of any of the following provisions is a misdemeanor, and not an infraction:

(a) Paragraph (1) of subdivision (c) of Section 35784, relating to special permit violations.

(b) Subdivision (a) of Section 35784.5 relating to

extralegal loads and operation of vehicles without a special permit.

(c) Other provisions of Chapter 5 (commencing with Section 35550) of Division 15, which relate to weight restrictions, except in cases of weight violations where the amount of excess weight is less than 4,501 pounds.

Amended Ch. 542, Stats. 1984. Effective January 1, 1985.

**Misdemeanors**

40000.24. A violation of any of the following provisions shall constitute a misdemeanor and not an infraction:

(a) Subdivision (c) of Section 38301.5, relating to unauthorized operation of a vehicle within a mountain fire district.

(b) Section 38316, relating to reckless driving.

(c) Section 38317, relating to reckless driving with injury.

(d) Subdivision (a) of Section 38318 or subdivision (a) of Section 38318.5, relating to off-highway vehicles.

(e) Section 38319, relating to protection of the environment.

(f) Section 38320, relating to the depositing of matter.

Amended Ch. 1015, Stats. 1984. Effective January 1, 1985. Supersedes Ch. 729.

**Misdemeanors**

40000.25. A violation of any of the following provisions shall constitute a misdemeanor, and not an infraction:

Section 40005, relating to owner's responsibility.

Section 40504, relating to false signatures.

Section 40508, relating to failure to appear or to pay fine.

Section 40519, relating to failure to appear.

Section 40614, relating to use of a fictitious name.

Section 40616, relating to a willful violation of a notice to correct.

Section 42005, relating to failure to attend traffic school.

Amended Ch. 1350, Stats. 1978. Operative July 1, 1979.

**Misdemeanors**

40000.26. A violation of subdivision (g) of Section 34501.12 or subdivision (d) of Section 34501.14, relating to inspections, is a misdemeanor and not an infraction.

Amended Ch. 1243, Stats. 1992. Effective September 30, 1992.

**Misdemeanor: Three or More Violations**

40000.28. Any offense which would otherwise be an infraction is a misdemeanor if a defendant has been convicted of three or more violations of this code or any local ordinance adopted pursuant to this code within the 12-month period immediately preceding the commission of the offense and such prior convictions are admitted by the defendant or alleged in the accusatory pleading. For this purpose, a bail forfeiture shall be deemed to be a conviction of the offense charged.

This section shall have no application to violations by pedestrians.

Amended Ch. 635, Stats. 1975. Effective January 1, 1976.

**Misdemeanor**

40000.61. A violation of Section 1808.45, relating to unauthorized disclosure of department records, is a misdemeanor, and not an infraction.

Added Ch. 1213, Stats. 1989. Effective January 1, 1990.

**Misdemeanors**

40000.65. A violation of Section 2430.5 or 2432, relating

to emergency road service, is a misdemeanor and not an infraction.

Added Ch. 488, Stats. 1991. Effective January 1, 1992.

### **Misdemeanor**

40000.70. A violation of Section 23112.5, relating to notification of an on-highway hazardous material or hazardous waste spill, is a misdemeanor and not an infraction.

Added Ch. 429, Stats. 1990. Effective January 1, 1991.

### **Misdemeanor**

40000.77. A violation of Article 7 (commencing with Section 2570) of Chapter 2.5 of Division 2, relating to transportation of school pupils, is a misdemeanor, not an infraction.

Added Ch. 1563, Stats. 1990. Effective January 1, 1991.

### **Owner's Responsibility: Fine**

40001. (a) It is unlawful for the owner, or any other person, employing or otherwise directing the driver of any vehicle to cause the operation of the vehicle upon a highway in any manner contrary to law.

(b) It is unlawful for an owner to request, cause, or permit the operation of any vehicle that is any of the following:

(1) Not registered or for which any fee has not been paid under this code.

(2) Not equipped as required in this code.

(3) Not in compliance with the size, weight, or load provisions of this code.

(4) Not in compliance with the regulations promulgated pursuant to this code, or with applicable city or county ordinances adopted pursuant to this code.

(5) Not in compliance with the provisions of Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code and the rules and regulations of the State Air Resources Board.

(c) Any employer who violates an out-of-service order, that complies with Section 396.9 of Title 49 of the Code of Federal Regulations, or who knowingly requires or permits a driver to violate or fail to comply with that out-of-service order, is guilty of a misdemeanor.

(d) An employer who is convicted of allowing, permitting, requiring, or authorizing a driver to operate a commercial motor vehicle in violation of any statute or regulation pertaining to a railroad-highway grade crossing is subject to a fine of not more than ten thousand dollars (\$10,000).

(e) Whenever a violation is chargeable to the owner or lessee of a vehicle pursuant to subdivision (a) or (b), the driver shall not be arrested or cited for the violation unless the vehicle is registered in a state or country other than California, or unless the violation is for an offense that is clearly within the responsibility of the driver.

(f) Whenever the owner, or lessee, or any other person is prosecuted for a violation pursuant to this section, the court may, on the request of the defendant, take appropriate steps to make the driver of the vehicle, or any other person who directs the loading, maintenance, or operation of the vehicle, a codefendant. However, the court may make the driver a codefendant only if the driver is the owner or lessee of the vehicle, or the driver is an employee or a contractor of the defendant who requested the court to make the driver a

codefendant. If the codefendant is held solely responsible and found guilty, the court may dismiss the charge against the defendant.

(g) In any prosecution under this section, it is a rebuttable presumption that any person who gives false or erroneous information in a written certification of actual gross cargo weight has directed, requested, caused, or permitted the operation of a vehicle in a manner contrary to law in violation of subdivision (a) or (b), or both.

Amended Sec. 51, Ch. 724, Stats. 1999. Effective January 1, 2000.

Amended Sec. 10, Ch. 504, Stats. 2001. Effective January 1, 2002.

Amended Sec. 200, Ch. 193, Stats. 2004. Effective January 1, 2005.

### **Prosecution of Persons Owning or Controlling Vehicles**

40002. (a) Whenever a written notice to appear has been mailed to an owner of a vehicle or other person referred to in Section 40001, an exact and legible duplicate copy of the notice when filed with the magistrate, in lieu of a verified complaint, is a complaint to which the defendant may plead "guilty."

If, however, the defendant fails to appear in court or does not deposit lawful bail, or pleads other than "guilty" of the offense charged, a complaint shall be filed which shall conform to Chapter 2 (commencing with Section 948) of Title 5 of Part 2 of the Penal Code, and which shall be deemed to be an original complaint, and thereafter proceedings shall be had as provided by law, except that a defendant may, by an agreement in writing, subscribed by the defendant and filed with the court, waive the filing of a verified complaint and elect that the prosecution may proceed upon a written notice to appear.

(b) A warrant of arrest shall not be issued against an owner of a vehicle or other person referred to in Section 40001 following the filing of a complaint for an offense under that section if the owner or person was not driving the vehicle involved unless the owner or other person is given notice of the offense charged and is informed that unless he or she appears in the court designated in the notice within 10 days after service of the notice and answers the charge, renewal of registration of the vehicle involved in the offense may be precluded or a warrant may be issued against him or her. The notice shall be given as prescribed by Section 22.

Amended Ch. 981, Stats. 1984. Effective July 1, 1985. Supersedes Ch. 881.

### **Notice to Department: Failure to Appear**

40002.1. (a) Whenever any person has failed to appear in the court designated in the notice specified in subdivision (b) of Section 40002, following personal service of the notice or deposit in the mail pursuant to Section 22, the magistrate or clerk of the court may give notice of that fact to the department. Whenever thereafter the matter is adjudicated, including a dismissal of the charges upon forfeiture of bail or otherwise, the magistrate or clerk of the court hearing the matter shall immediately (1) endorse a certificate to that effect, (2) provide the person or the person's attorney with a copy of the certificate, and (3) transmit a copy of the certificate to the department.

(b) No notice of noncompliance may be transmitted to the department pursuant to subdivision (a) if a warrant of arrest has been issued on the same offense pursuant to subdivision (b) of Section 40002. No warrant of arrest may be issued pursuant to subdivision (b) of Section 40002 if a notice of

noncompliance has been transmitted to the department on the same offense pursuant to this section, except that, when a notice has been received by the court pursuant to subdivision (c) of Section 4766 or recalled by motion of the court, a warrant may then be issued.

Amended Sec. 75, Ch. 877, Stats. 1998. Effective January 1, 1999.

### **Prosecution of Employees**

40003. Whenever an employee is prosecuted for a violation of any provision of this code, or regulations promulgated pursuant to this code, relating to the size, weight, registration, equipment, or loading of a vehicle while operating a vehicle he was employed to operate, and which is owned by his employer, the court shall on the request of the employee take appropriate proceedings to make the owner of the vehicle a codefendant. In the event it is found that the employee had reasonable grounds to believe that the vehicle operated by him as an employee did not violate such provisions, and in the event the owner is found guilty under the provisions of Section 40001, the court may dismiss the charges against the employee.

In those cases in which the charges against the employee are dismissed, the abstract of the record of the court required by Section 1803 shall clearly indicate that such charges were dismissed and that the owner of the vehicle was found guilty under Section 40001.

Amended Ch. 819, Stats. 1967. Effective November 8, 1967.

### **Period for Commencing Criminal Action**

40004. (a) The period for commencing criminal action against any person having filed or caused to be filed any false, fictitious, altered, forged or counterfeit document with the Department of Motor Vehicles or the Department of the California Highway Patrol shall, if the offense is a misdemeanor, expire one year from time of discovery of such act.

(b) The period for commencing criminal action against any person having filed or caused to be filed any false, fictitious, altered, forged or counterfeit document with the Department of Motor Vehicles or the Department of the California Highway Patrol shall, if the offense is a felony, expire three years from time of discovery of such act.

(c) The time allowed for commencing criminal proceedings as provided in subdivisions (a) and (b) of this section shall not extend beyond five years from the date of commission of the act.

Repealed and added Ch. 1192, Stats. 1968. Operative January 1, 1969.

### **Employer's Failure**

40005. Whenever a driver is cited for a violation of any provision of this code, or regulations promulgated pursuant to this code, relating to the size, weight, equipment, registrations, fees, or loading of a vehicle, while operating a vehicle he was employed or otherwise directed to operate, and which is not owned by him, and the driver gives the citation to the owner or any other person referred to in Section 40001, if the owner or other person undertakes to answer the charge or otherwise to cause its disposition without any further action by the driver and then fails to act in accordance with the undertaking as a consequence of which a warrant is issued for the arrest of the driver, the owner or other person is guilty of a misdemeanor.

Added Ch. 294, Stats. 1965. Effective September 17, 1965.

### **Towed Vehicle; Owner Responsibility**

40006. Whenever a disabled vehicle, being taken to a repair shop, garage, or other place of storage, is being towed upon a highway by a tow car and the vehicle is determined to be in violation of subdivision (a) of Section 4000, the violation shall be charged as prescribed in Section 40001.

Added Ch. 152, Stats. 1979. Effective January 1, 1980.

### **Occupational Licensing: Penalties**

40007. Division 5 (commencing with Section 11100) does not preclude the application of any other statutory provision which is applicable to any act violating any provision of Division 5.

Added Ch. 93, Stats. 1985. Effective January 1, 1986.

### **Article 2. Procedure on Equipment and Registration Violations**

#### **Proof of Correction**

40150. Whenever any vehicle or combination of vehicles is found to be in an unsafe mechanical condition or is not equipped as required by this code, and a notice to appear is issued or a complaint filed for such violation, the notice to appear or the complaint may require that the person to whom the notice to appear is issued or against whom the complaint is filed shall produce in court satisfactory evidence that the vehicle or its equipment has been made to conform with the requirements of this code.

Amended Ch. 1728, Stats. 1961. Effective September 15, 1961.

#### **Lighting Equipment**

40151. (a) Whenever any lighting equipment or device does not meet requirements established by the Department of the California Highway Patrol, the officer making the inspection shall direct the driver to remove the lighting equipment or device within 24 hours.

(b) Whenever any lighting equipment or device meets requirements established by the department but by reason of faulty adjustment or otherwise fails to comply with this code, the officer making the inspection shall direct the driver to make it comply with this code within 48 hours.

Amended Ch. 723, Stats. 1979. Effective January 1, 1980.

### **Unregistered Vehicle: Compliance**

40152. (a) Whenever any vehicle or combination of vehicles is found to be not registered as required by this code, and a notice to appear is issued or a complaint is filed for that violation, the person to whom the notice to appear is issued or against whom the complaint is filed shall produce in court satisfactory evidence that the vehicle or combination of vehicles has been registered or has had the appropriate fees paid, or has been reduced to junk, to conform with the requirements of this code. The court shall not dismiss the offense until that evidence is produced.

(b) A four-day, nonresident commercial trip permit of the type authorized in Section 4004 may not be accepted as evidence of registration compliance as required in subdivision (a) of this section.

Amended Sec. 83, Ch. 1154, Stats. 1996. Effective September 30, 1996.

### **Article 3. Procedure on Parking Violations**

(Added Ch. 939, Stats. 1986. Effective January 1, 1987.)

#### **Parking Violation: Procedure**

40200. (a) Any violation of any regulation that is not a misdemeanor governing the standing or parking of a vehicle

under this code, under any federal statute or regulation, or under any ordinance enacted by local authorities is subject to a civil penalty. The enforcement of those civil penalties shall be governed by the civil administrative procedures set forth in this article.

(b) Except as provided in Section 40209, the registered owner and driver, rentee, or lessee of a vehicle cited for any violation of any regulation governing the parking of a vehicle under this code, under any federal statute or regulation, or under any ordinance enacted by a local authority shall be jointly liable for parking penalties imposed under this article, unless the owner can show that the vehicle was used without consent of that person, express or implied. An owner who pays any parking penalty, civil judgment, costs, or administrative fees pursuant to this Article shall have the right to recover the same from the driver, rentee, or lessee.

(c) The driver of a vehicle who is not the owner thereof but who uses or operates the vehicle with the express or implied permission of the owner shall be considered the agent of the owner to receive notices of parking violations served in accordance with this Article and may contest the notice of violation.

Amended Ch. 1093, Stats. 1993. Effective January 1, 1994.

#### **Allocation of Parking Penalties**

40200.3. (a) All parking penalties collected by the processing agency, which may be the issuing agency, including process service fees and fees and collection costs related to civil debt collection, shall be deposited to the account of the issuing agency, except that those sums attributable to the issuance of a notice of parking violation by a peace officer of the Department of the California Highway Patrol shall be deposited in the account in the jurisdiction where the violation occurred, and except those sums payable to a county pursuant to Chapter 12 (commencing with Section 76000) of Title 8 of the Government Code and that portion of any parking penalty which is attributable to an increase in the parking bail amount effective between September 16, 1988, and July 1, 1992, inclusive, pursuant to Section 1463.28 of the Penal Code. Those funds attributable to this increase in bail shall be transferred to the county treasurer and deposited in the general fund. Any increase in parking penalties effective after July 1, 1992, shall accrue to the benefit of the issuing agency.

(b) The processing agency shall prepare a report at the end of each fiscal year setting forth the number of cases processed, and all sums received and distributed, together with any other information that may be required by the issuing agency or the Controller. This report is a public record and shall be delivered to each issuing agency. Copies shall be made available, upon request, to the county auditor, the Controller, and the grand jury.

Amended Sec. 72, Ch. 305, Stats. 1996. Effective January 1, 1997.

#### **Processing Notices: Processing Agency**

40200.4. (a) The processing agency shall deposit with the county treasurer all sums due the county as the result of processing a parking violation not later than 45 calendar days after the last day of the month in which the parking penalty was received.

(b) Except as provided in subdivisions (c) and (d), if a court

within a county has been processing notices of parking violations and notices of delinquent parking violations for a city, a district, or any other issuing agency, the issuing agency and the county shall provide in an agreement for the orderly transfer of the processing activity as soon as possible but not later than January 1, 1994. The agreement shall permit the court to phase out, and the issuing agency to phase in, or transfer, personnel, equipment, and facilities that may have been acquired or need to be acquired in contemplation of a long-term commitment to processing of notices of parking violations and notices of delinquent parking violations for the issuing agency under this article. The court shall transfer the processing function for parking citations issued by the Department of the California Highway Patrol to the processing agency in the city or county where the violation occurred.

(c) If Contra Costa County or San Mateo County, or a court in either county, had a contract in effect on January 1, 1992, to process notices of parking violations and notices of delinquent parking violations for a city, district, or other issuing agency within the particular county or counties, the county may continue to provide those services to the issuing agencies pursuant to the terms of the contract and any amendments thereto, to and including June 30, 1996, after which Section 40200.5 shall govern any contracts entered into for these services.

(d) San Francisco Municipal Court employees engaged in processing notices of parking violations and the positions of those employees shall be transferred to equivalent civil service positions in the City and County of San Francisco.

(e) No court employee shall be terminated or otherwise released from employment as a result of the transfer of processing notices of parking violations and notices of delinquent parking violations from the courts to the issuing agencies.

(f) As used in this article, “parking penalty” includes the fine authorized by law, including assessments authorized by this article, any late payment penalty, and costs of collection as provided by law.

Amended Sec. 73, Ch. 305, Stats. 1996. Effective January 1, 1997.

#### **Contract for Processing Notices**

40200.5. (a) Except as provided in subdivision (c) of Section 40200.4, an issuing agency may elect to contract with the county, with a private vendor, or with any other city or county processing agency, other than the Department of the California Highway Patrol or other state law enforcement agency, within the county, with the consent of that other entity, for the processing of notices of parking violations and notices of delinquent parking violations, prior to filing with the court pursuant to Section 40230.

If an issuing agency contracts with a private vendor for processing services, it shall give special consideration to minority business enterprise participation in providing those services. For purposes of this subdivision, “special consideration” has the same meaning as specified in subdivision (c) of Section 14838 of the Government Code, as it relates to small business preference.

(b) Any contract entered pursuant to subdivision (a) shall provide for monthly distribution of amounts collected

between the parties, except those amounts payable to a county pursuant to Chapter 12 (commencing with Section 76000) of Title 8 of the Government Code and amounts payable to the Department of Motor Vehicles pursuant to Section 4763 of this code.

Amended Sec. 74, Ch. 305, Stats. 1996. Effective January 1, 1997.

#### **Issuing Agency: Duties: Processing Agency Defined**

40200.6. (a) If a contract is entered into pursuant to Section 40200.5, for the purposes of this article, “processing agency” means the contracting party responsible for the processing of the notices of parking violations and notices of delinquent parking violations.

(b) The governing body of the issuing agency shall establish written policies and procedures pursuant to which the contracting party shall provide services.

(c) The issuing agency shall be responsible for all actions taken by contracting parties and shall exercise effective oversight over the parties. “Effective oversight” includes, at a minimum, an annual review of the services of the processing agency and a review of complaints made by motorists using the services of the processing agency. The issuing agency shall establish procedures to investigate and resolve complaints by motorists about any processing agency.

(d) Subdivision (c) does not apply to an issuing agency that is a law enforcement agency if the issuing agency does not also act as the processing agency.

Amended Sec. 5, Ch. 734, Stats. 1995. Effective January 1, 1996.

#### **Recall of Parking Citation Hold**

40200.8. The parking processing agency shall notify the department and recall any hold on the registration of a vehicle that it filed with the department in connection with a parking citation if the processing agency is awarded a civil judgment for the citation pursuant to subdivision (b) or (c) of Section 40220, or if the processing agency has granted a review of the issuance of the citation pursuant to Section 40200.7 or Section 40215.

Added Sec. 41, Ch. 766, Stats. 1995. Effective January 1, 1996.

#### **Notice of Parking Violation**

40202. (a) If a vehicle is unattended during the time of the violation, the peace officer or person authorized to enforce parking laws and regulations shall securely attach to the vehicle a notice of parking violation setting forth the violation, including reference to the section of this code or of the Public Resources Code, the local ordinance, or the federal statute or regulation so violated; the date; the approximate time thereof; the location where the violation occurred; a statement printed on the notice indicating that the date of payment is required to be made not later than 21 calendar days from the date of citation issuance; and the procedure for the registered owner, lessee, or rentee to deposit the parking penalty or, pursuant to Section 40215, contest the citation. The notice of parking violation shall also set forth the vehicle license number and registration expiration date if they are visible, the last four digits of the vehicle identification number, if that number is readable through the windshield, the color of the vehicle, and, if possible, the make of the vehicle. The notice of parking violation, or copy thereof, shall be considered a record kept in the ordinary course of business of the issuing agency and the processing agency and shall be

prima facie evidence of the facts contained therein.

(b) The notice of parking violation shall be served by attaching it to the vehicle either under the windshield wiper or in another conspicuous place upon the vehicle so as to be easily observed by the person in charge of the vehicle upon the return of that person.

(c) Once the issuing officer has prepared the notice of parking violation and has attached it to the vehicle as provided in subdivisions (a) and (b), the officer shall file the notice with the processing agency. Any person, including the issuing officer and any member of the officer’s department or agency, or any peace officer who alters, conceals, modifies, nullifies, or destroys, or causes to be altered, concealed, modified, nullified, or destroyed the face of the remaining original or any copy of a citation that was retained by the officer, for any reason, before it is filed with the processing agency or with a person authorized to receive the deposit of the parking penalty, is guilty of a misdemeanor.

(d) If, during the issuance of a notice of parking violation, without regard to whether the vehicle was initially attended or unattended, the vehicle is driven away prior to attaching the notice to the vehicle, the issuing officer shall file the notice with the processing agency. The processing agency shall mail, within 15 calendar days of issuance of the notice of parking violation, a copy of the notice of parking violation or transmit an electronic facsimile of the notice to the registered owner.

(e) If, within 21 days after the notice of parking violation is attached to the vehicle, the issuing officer or the issuing agency determines that, in the interest of justice, the notice of parking violation should be canceled, the issuing agency, pursuant to subdivision (a) of Section 40215, shall cancel the notice of parking violation or, if the issuing agency has contracted with a processing agency, shall notify the processing agency to cancel the notice of parking violation pursuant to subdivision (a) of Section 40215. The reason for the cancellation shall be set forth in writing.

If, after a copy of the notice of parking violation is attached to the vehicle, the issuing officer determines that there is incorrect data on the notice, including, but not limited to, the date or time, the issuing officer may indicate in writing, on a form attached to the original notice, the necessary correction to allow for the timely entry of the notice on the processing agency’s data system. A copy of the correction shall be mailed to the registered owner of the vehicle.

(f) Under no circumstances shall a personal relationship with any officer, public official, or law enforcement agency be grounds for cancellation.

Amended Sec. 3, Ch. 885, Stats. 1998. Effective January 1, 1999.

#### **Notice of Penalty**

40203. The notice of parking violation shall be accompanied by a written notice of the amount of the parking penalty due for that violation, the address of the person authorized to receive a deposit of the parking penalty, a statement in bold print that payments of the parking penalty for the parking violation may be sent through the mail, and instructions on obtaining information on the procedures to contest the notice of parking violation.

Amended Sec. 8, Ch. 734, Stats. 1995. Effective January 1, 1996.

**Establishment and Collection of Penalty**

40203.5. (a) The schedule of parking penalties for parking violations and late payment penalties shall be established by the governing body of the jurisdiction where the notice of violation is issued. To the extent possible, issuing agencies within the same county shall standardize parking penalties.

(b) Parking penalties under this Article shall be collected as civil penalties.

Amended Sec. 9, Ch. 734, Stats. 1995. Effective January 1, 1996.

**Payment of Penalty**

40204. If the parking penalty is received by the person authorized to receive the deposit of the parking penalty and there is no contest as to that parking violation, the proceedings under this Article shall terminate.

Amended Ch. 1244, Stats. 1992. Effective January 1, 1993.

**Contesting Penalty**

40205. If a person contests the parking violation, the processing agency shall proceed in accordance with Section 40215.

Amended Ch. 1244, Stats. 1992. Effective January 1, 1993.

**Notice of Delinquent Violations**

40206. (a) If the payment of the parking penalty is not received by the person authorized to receive a deposit of the parking penalty by the date fixed on the notice of parking violation under Section 40202, the processing agency shall deliver to the registered owner a notice of delinquent parking violation.

(b) Delivery of a notice of delinquent parking violation under this section may be made by personal service or by first-class mail addressed to the registered owner, as shown on records of the Department of Motor Vehicles.

Amended Ch. 1244, Stats. 1992. Effective January 1, 1993.

**Copy of Original Notice of Violation**

40206.5. (a) Within 15 days of a request, by mail or in person, the processing agency shall mail or otherwise provide to any person who has received a notice of delinquent parking violation, or his or her agent, a photostatic copy of the original notice of parking violation or an electronically produced facsimile of the original notice of parking violation. The issuing agency may charge a fee sufficient to recover the actual cost of providing the copy, not to exceed two dollars (\$2). Until the issuing agency complies with a request for a copy of the original notice of parking violation, the processing agency may not proceed pursuant to subdivision (i) of Section 22651, Section 22651.7, or Section 40220.

(b) If the description of the vehicle on the notice of parking violation does not substantially match the corresponding information on the registration card for that vehicle and the processing agency is satisfied that the vehicle has not been incorrectly described due to the intentional switching of license plates, the processing agency shall, on written request of the person cancel the notice of parking violation without the necessity of an appearance by that person.

(c) For purposes of this section, a copy of the notice of parking violation may be a photostatic copy or an electronically produced facsimile.

Amended Ch. 1093, Stats. 1993. Effective January 1, 1994.

**Contents of Notice of Delinquent Violation**

40207. The notice of delinquent parking violation shall contain the information specified in subdivision (a) of Section 40202 and Section 40203, and, additionally shall contain a notice to the registered owner that, unless the registered owner pays the parking penalty or contests the citation within 21 calendar days from the date of issuance of the citation or 14 calendar days after mailing of the notice of delinquent parking violation or completes and files an affidavit of nonliability which complies with Section 40208 or 40209, the renewal of the vehicle registration shall be contingent upon compliance with the notice of delinquent parking violation. If the registered owner, by appearance or by mail, makes payment to the processing agency within 21 calendar days from the date of issuance of the citation or 14 calendar days after the mailing of the notice of delinquent parking violation, the parking penalty shall consist solely of the amount of the original penalty. No additional fees, assessments, or other charges shall be added.

Amended Sec. 7, Ch. 1156, Stats. 1996. Effective January 1, 1997.

**Affidavit of Nonliability**

40208. The notice of delinquent parking violation shall contain, or be accompanied with, an affidavit of nonliability and information of what constitutes nonliability, information as to the effect of executing the affidavit, and instructions for returning the affidavit to the issuing agency.

Added Ch. 939, Stats. 1986. Effective January 1, 1987.

**Affidavit of Nonliability: Leased or Rented Vehicle**

40209. If the affidavit of nonliability is returned to the processing agency within 30 calendar days of the mailing of the notice of delinquent parking violation together with the proof of a written lease or rental agreement between a bona fide rental or leasing company, and its customer which identifies the rentee or lessee and provides the driver's license number, name, and address of the rentee or lessee, the processing agency shall serve or mail to the rentee or lessee identified in the affidavit of nonliability a notice of delinquent parking violation. If payment is not received within 21 calendar days from the date of issuance of the citation or 14 calendar days after the mailing of the notice of delinquent parking violation, the processing agency may proceed against the rentee or lessee pursuant to Section 40220.

Amended Sec. 8, Ch. 1156, Stats. 1996. Effective January 1, 1997.

**Affidavit of Nonliability: Vehicle Sold or Transferred**

40210. (a) If the affidavit of nonliability is returned with evidence that the registered owner served has made a bona fide sale or transfer of the vehicle and has delivered possession thereof to the purchaser prior to the date of the alleged violation, the processing agency shall obtain verification from the department that the registered owner has complied with Section 5602.

(b) If the registered owner has complied with Section 5602, the processing agency shall cancel the notice of delinquent parking violation with respect to the registered owner.

(c) If the registered owner has not complied with Section 5602, the processing agency shall inform the registered owner that the citation shall be paid in full or contested pursuant to Section 40215. If the registered owner does not



comply, the processing agency shall proceed pursuant to Section 40220.

Amended Sec. 12, Ch. 734, Stats. 1995. Effective January 1, 1996.

### **Processing of Delinquent Parking Violations**

40211. (a) If the registered owner, or an agent of the registered owner, or a rentee or lessee who was served with the notice of delinquent parking violation pursuant to Section 40206 or Section 40209, or any other person who presents the notice of parking violation or notice of delinquent parking violation after the notice of delinquent parking violation has been issued for delivery under Section 40206, deposits the parking penalty with a person authorized to receive it, the processing agency shall do both of the following:

(1) Deliver a copy of one of the following: the notice of delinquent parking violation issued under Section 40206; a true and correct abstract containing the information set forth in the notice of parking violation if the citation was issued electronically; or an electronically reproduced listing of the citation information presented in a notice of delinquent parking violation to the person and record the name, address, and driver's license number of the person actually given the copy in the records of the issuing agency.

For the purposes of this paragraph, a copy of the notice of delinquent parking violation may be a photostatic copy.

(2) Determine whether the notice of delinquent parking violation has been filed with the department pursuant to subdivision (b) of Section 40220 or a civil judgment has been entered pursuant to Section 40220.

(b) If the notice of delinquent parking violation has not been filed with the department or judgment entered and payment of the parking penalty, including any applicable assessments, is received, the proceedings under this Article shall terminate.

(c) If the notice of delinquent parking violation has been filed with the department, has been returned under subdivision (b) or (c) of Section 4760 or Section 4764, and payment of the parking penalty together with the administrative service fee of the processing agency for costs of service and any applicable assessments is received, the proceedings under this Article shall terminate.

(d) If the notice of delinquent parking violation has been filed with the department and has not been returned under Section 4760, 4762, and 4764, and payment of the parking penalty for, and any applicable costs of, service in connection with civil debt collection, is received by the processing agency, the processing agency shall do all of the following:

(1) Deliver a certificate of payment to the registered owner, the agent, the lessee, or the rentee or other person making the payment.

(2) Immediately transmit the payment information to the department in the manner prescribed by the department.

(3) Terminate proceedings on the notice of delinquent parking violation.

(4) Transmit for deposit all parking penalties and assessments in accordance with law.

Amended Sec. 13, Ch. 734, Stats. 1995. Effective January 1, 1996.

### **Contesting Parking Violation: Procedure**

40215. (a) For a period of 21 calendar days from the issuance of a notice of parking violation or 14 calendar days from the mailing of a notice of delinquent parking violation, a

person may request an initial review of the notice by the issuing agency. The request may be made by telephone, in writing, or in person. There shall be no charge for this review. If, following the initial review, the issuing agency is satisfied that the violation did not occur, that the registered owner was not responsible for the violation, or that extenuating circumstances make dismissal of the citation appropriate in the interest of justice, the issuing agency shall cancel the notice of parking violation or notice of delinquent parking violation. The issuing agency shall advise the processing agency, if any, of the cancellation. The issuing agency or the processing agency shall mail the results of the initial review to the person contesting the notice.

(b) If the person is dissatisfied with the results of the initial review, the person may request an administrative hearing of the violation no later than 21 calendar days following the mailing of the results of the issuing agency's initial review. The request may be made by telephone, in writing, or in person. The person requesting an administrative hearing shall deposit the amount of the parking penalty with the processing agency. The issuing agency shall provide a written procedure to allow a person to request an administrative hearing without payment of the parking penalty upon satisfactory proof of an inability to pay the amount due. Notice of this procedure shall be provided to all persons requesting an administrative hearing. After January 1, 1996, an administrative hearing shall be held within 90 calendar days following the receipt of a request for an administrative hearing, excluding time tolled pursuant to this article. The person requesting the hearing may request one continuance, not to exceed 21 calendar days.

(c) The administrative hearing process shall include the following:

(1) The person requesting a hearing shall have the choice of a hearing by mail or in person. An in-person hearing shall be conducted within the jurisdiction of the issuing agency. If an issuing agency contracts with an administrative provider, hearings shall be held within the jurisdiction of the issuing agency or no more than 21 miles outside the county.

(2) If the person requesting a hearing is a minor, that person shall be permitted to appear at a hearing or admit responsibility for the parking violation without the necessity of the appointment of a guardian. The processing agency may proceed against the minor in the same manner as against an adult.

(3) The administrative hearing shall be conducted in accordance with written procedures established by the issuing agency and approved by the governing body or chief executive officer of the issuing agency. The hearing shall provide an independent, objective, fair, and impartial review of contested parking violations.

(4) (A) The issuing agency's governing body or chief executive officer shall appoint or contract with qualified examiners or administrative hearing providers that employ qualified examiners to conduct the administrative hearings. Examiners shall demonstrate those qualifications, training, and objectivity necessary to conduct a fair and impartial review. An examiner shall not be employed, managed, or controlled by a person whose primary duties are parking enforcement, parking citation, processing, collection, or

issuance. The examiner shall be separate and independent from the citation collection or processing function. An examiner's continued employment, performance evaluation, compensation, and benefits shall not, directly or indirectly, be linked to the amount of fines collected by the examiner.

(B) Examiners shall have a minimum of 20 hours of training. The examiner is responsible for the costs of the training. The issuing agency may reimburse the examiner for those costs. Training may be provided through (i) an accredited college or university, (ii) a program conducted by the Commission on Peace Officer Standards and Training, (iii) American Arbitration Association or a similar established organization, or (iv) through any program approved by the governing board of the issuing agency, including a program developed and provided by, or for, the agency. Training programs may include topics relevant to the administrative hearing, including, but not limited to, applicable laws and regulations, parking enforcement procedures, due process, evaluation of evidence, hearing procedures, and effective oral and written communication. Upon the approval of the governing board of the issuing agency, up to 12 hours of relevant experience may be substituted for up to 12 hours of training. In addition, up to eight hours of the training requirements described in this subparagraph may be credited to an individual, at the discretion of the governing board of the issuing agency, based upon training programs or courses described in (i) to (iv), inclusive, that the individual attended within the last five years.

(5) The officer or person who issues a notice of parking violation shall not be required to participate in an administrative hearing. The issuing agency shall not be required to produce any evidence other than the notice of parking violation or copy thereof and information received from the Department of Motor Vehicles identifying the registered owner of the vehicle. The documentation in proper form shall be prima facie evidence of the violation.

(6) The examiner's decision following the administrative hearing may be personally delivered to the person by the examiner or sent by first-class mail.

(7) Following a determination by the examiner that a person has committed the violation, the examiner may, consistent with the written guidelines established by the issuing agency, allow payment of the parking penalty in installments, or an issuing agency may allow for deferred payment or allow for payments in installments, if the person provides evidence satisfactory to the examiner or the issuing agency, as the case may be, of an inability to pay the parking penalty in full. If authorized by the governing board of the issuing agency, the examiner may permit the performance of community service in lieu of payment of a parking penalty.

(d) The provisions of this section relating to the administrative appeal process do not apply to an issuing agency that is a law enforcement agency if the issuing agency does not also act as the processing agency.

Amended Sec. 4, Ch. 640, Stats. 2002. Effective January 1, 2003.

### **Disposition of Delinquent Parking Violation**

40220. Except as otherwise provided in Sections 40221 and 40222, the processing agency shall proceed under only

one of the following options in order to collect an unpaid parking penalty:

(a) File an itemization of unpaid parking penalties and service fees with the department for collection with the registration of the vehicle pursuant to Section 4760.

(b) If more than four hundred dollars (\$400) in unpaid penalties and fees have been accrued by any person or registered owner, proof thereof may be filed with the court with the same effect as a civil judgment. Execution may be levied and other measures may be taken for the collection of the judgment as are authorized for the collection of an unpaid civil judgment entered against a defendant in an action on a debtor. The court may assess costs against a judgment debtor to be paid upon satisfaction of the judgment. The processing agency shall send a notice by first-class mail to the person or registered owner indicating that a judgment shall be entered for the unpaid penalties, fees, and costs and that, after 21 calendar days from the date of the mailing of the notice, the judgment shall have the same effect as an entry of judgment against a judgment debtor. The person or registered owner shall also be notified at that time that execution may be levied against his or her assets, liens may be placed against his or her property, his or her wages may be garnisheed, and other steps may be taken to satisfy the judgment. If a judgment is rendered for the processing agency, that agency may contract with a collection agency to collect the amount of that judgment. Notwithstanding any other provision of law, the processing agency shall pay the established first paper civil filing fee at the time an entry of civil judgment is requested.

(c) If the registration of the vehicle has not been renewed for 60 days beyond the renewal date, and the citation has not been collected by the department pursuant to Section 4760, file proof of unpaid penalties and fees with the court with the same effect as a civil judgment as provided in subdivision (b).

Amended Sec. 16, Ch. 734, Stats. 1995. Effective January 1, 1996.

### **Prohibition Against Filing Complaint With Court**

40221. The processing agency shall not file a civil judgment with the court relating to a parking violation which has been filed with the department unless the processing agency has determined that the registration of the vehicle has not been renewed for 60 days beyond the renewal date and the citation has not been collected by the department pursuant to Section 4760.

Amended Ch. 1244, Stats. 1992. Effective January 1, 1993.

### **Termination of Proceedings**

40222. The processing agency shall terminate proceedings on the notice of delinquent parking violation in any of the following cases:

(a) Upon receipt of collected penalties and administrative fees remitted by the department under Section 4762 for that notice of delinquent parking violation. The termination under this subdivision is by satisfaction of the parking penalty.

(b) If the notice of delinquent parking violation was returned to the processing agency pursuant to Section 4764 and five years have elapsed since the date of the violation. The termination under this subdivision is by the running of a statute of limitation of proceedings.

(c) The processing agency receives information, which it

shall verify with the department, that the penalty has been paid to the department pursuant to Section 4762.

Added Ch. 939, Stats. 1986. Effective January 1, 1987.

**Parking Violation: Statute of Limitations: Tolling**

40224. The time limitation provided by law for commencement of a civil action for a violation specified in Section 40200 shall be tolled from and after the date a notice of delinquent parking violation is filed with the department pursuant to subdivision (b) of Section 40220 until the notice is returned to the processing agency under subdivision (b) of Section 4760 or Section 4762 or 4764 or is recalled by the processing agency pursuant to subdivision (d) of Section 40211.

Amended Sec. 17, Ch. 734, Stats. 1995. Effective January 1, 1996.

**Processing Other Violations**

40225. (a) An equipment violation entered on the notice of parking violation attached to the vehicle under Section 40203 shall be processed in accordance with this article. All of the violations entered on the notice of parking violation shall be noticed in the notice of delinquent parking violation delivered pursuant to Section 40206, together with the amount of civil penalty.

(b) Whether or not a vehicle is in violation of any regulation governing the standing or parking of a vehicle but is in violation of subdivision (a) of Section 5204, a person authorized to enforce parking laws and regulations shall issue a written notice of parking violation, setting forth the alleged violation. The violation shall be processed pursuant to this section.

(c) The civil penalty for each equipment violation, including failure to properly display a license plate, is the amount established for the violation in the Uniform Bail and Penalty Schedule, as adopted by the Judicial Council, except that upon proof of the correction to the processing agency, the penalty shall be reduced to ten dollars (\$10). The reduction provided for in this subdivision involving failure to properly display license plates shall only apply if, at the time of the violation, valid license plates were issued for that vehicle in accordance with this code. The civil penalty for each violation of Section 5204 is the amount established for the violation in the Uniform Bail and Penalty Schedule, as adopted by the Judicial Council, except that upon proof of the correction to the processing agency, the penalty shall be reduced to ten dollars (\$10).

(d) Fifty percent of any penalty collected pursuant to this section for registration or equipment violations by a processing agency shall be paid to the county for remittance to the State Treasurer and the remaining 50 percent shall be retained by the issuing agency and processing agency subject to the terms of the contract described in Section 40200.5.

(e) Subdivisions (a) and (b) do not preclude the recording of a violation of subdivision (a) or (b) of Section 4000 on a notice of parking violation or the adjudication of that violation under the civil process set forth in this article.

Amended Sec. 4, Ch. 885, Stats. 1998. Effective January 1, 1999.

**Failure to Display Disabled Placard: Administrative Charge**

40226. An issuing agency may, in lieu of collecting a fine for a citation for failure to display a disabled placard, charge

an administrative fee not to exceed twenty-five dollars (\$25) to process cancellation of a citation in any case where the individual who received the citation can show proof that he or she had been issued a valid placard at the time the citation was received.

Added Sec. 5, Ch. 640, Stats. 2002. Effective January 1, 2003.

**Notice of Appeal to Court: Hearing: Fees**

40230. (a) Within 30 calendar days after the mailing or personal delivery of the final decision described in subdivision (b) of Section 40215, the contestant may seek review by filing an appeal to be heard by the superior court where the same shall be heard de novo, except that the contents of the processing agency's file in the case shall be received in evidence. A copy of the notice of parking violation or, if the citation was issued electronically, a true and correct abstract containing the information set forth in the notice of parking violation shall be admitted into evidence as prima facie evidence of the facts stated therein. A copy of the notice of appeal shall be served in person or by first-class mail upon the processing agency by the contestant. For purposes of computing the 30-calendar-day period, Section 1013 of the Code of Civil Procedure shall be applicable. A proceeding under this subdivision is a limited civil case.

(b) The fee for filing the notice of appeal is twenty-five dollars (\$25). The court shall request that the processing agency's file on the case be forwarded to the court, to be received within 15 calendar days of the request. The court shall notify the contestant of the appearance date by mail or personal delivery. The court shall retain the twenty-five dollar (\$25) fee regardless of the outcome of the appeal. If the court finds in favor of the contestant, the amount of the fee shall be reimbursed to the contestant by the processing agency. Any deposit of parking penalty shall be refunded by the processing agency in accordance with the judgment of the court.

(c) The conduct of the appeal under this section is a subordinate judicial duty that may be performed by traffic trial commissioners and other subordinate judicial officials at the direction of the presiding judge of the court.

(d) If no notice of appeal of the processing agency's decision is filed within the period set forth in subdivision (a), the decision shall be deemed final.

(e) If the parking penalty has not been deposited and the decision is against the contestant, the processing agency shall, after the decision becomes final, proceed to collect the penalty pursuant to Section 40220.

Amended Sec. 459, Ch. 931, Stats. 1998. Effective September 28, 1998.

Amended Sec. 152, Ch. 75, Stats. 2005. Effective July 19, 2005. Operative January 1, 2006.

**Article 4. Procedure on Toll Evasion Violations**

(Added Sec. 8, Ch. 739, Stats. 1995. Effective January 1, 1996.)

**Toll Evasion Violations**

40250. (a) Except where otherwise specifically provided, any violation of any statute, regulation, or ordinance governing the evasion of tolls on toll facilities under this code, under any federal or state statute or regulation, or under any ordinance enacted by local authorities including joint powers authorities, or a district organized pursuant to Part 3 (commencing with Section 27000) of Division 16 of the Streets and Highways Code is subject to a civil penalty. The

enforcement of those civil penalties shall be governed by the civil administrative procedures set forth in this article.

(b) Except as provided in Section 40264, the registered owners, driver, rentee, or lessee of a vehicle cited for any toll evasion violation of any toll facility, under any applicable statute, regulation, or ordinance shall be jointly and severally liable for toll evasion penalties imposed under this article, unless the owners can show that the vehicle was used without consent of that person, express or implied. Any person who pays any toll evasion penalty, civil judgment, costs, or administrative fees pursuant to this Article shall have the right to recover the same from the driver, rentee, or lessee.

(c) The driver of a vehicle who is not the owner thereof but who uses or operates the vehicle with the express or implied permission of the owner shall be considered the agent of the owner to receive notices of toll evasion violations served in accordance with this Article and may contest the notice of violation.

(d) If the driver of the vehicle is in violation of the laws, regulations, or ordinances governing toll evasion violations, and if the driver is arrested pursuant to Article 1 (commencing with Section 40300) of Chapter 2, this Article does not apply.

(e) "Issuing agency" is any entity, public or private, authorized to collect tolls.

Added Sec. 8, Ch. 739, Stats. 1995. Effective January 1, 1996.

#### **Toll Evasion Penalties: Disposition**

40251. All toll evasion penalties collected by the processing agency, as defined in Section 40253, including all administrative fees, process service fees, and fees and collection costs related to civil debt collection, shall be deposited to the account of the issuing agency, except that those sums attributable to the issuance of a toll evasion violation by a member of the California Highway Patrol shall be deposited in accordance with Article 1 (commencing with Section 42200) of Chapter 2 of Division 18 in the city or county where the violation occurred. At the end of each fiscal year, the issuing agencies of facilities which have been developed pursuant to Section 143 of the Streets and Highways Code shall deposit in the State Highway Account in the State Transportation Fund any amounts collected under Section 40253 in excess of the sum of the unpaid toll, administrative fees, other costs incurred by the issuing agency that are related to toll evasion, process service fees, and fees and collection costs related to civil debt collection.

Added Sec. 8, Ch. 739, Stats. 1995. Effective January 1, 1996.

#### **Contracting for Toll Evasion Penalty Processing**

40252. (a) An issuing agency may elect to contract with the state, the county, a local authority, or a district organized pursuant to Part 3 (commencing with Section 27000) of Division 16 of the Streets and Highways Code, or with a private vendor, for the processing of notices of toll evasion violations and notices of delinquent toll evasion violations, prior to filing with the court pursuant to Section 40256.

(b) As used in this article, "toll evasion penalty" includes, but is not limited to, any late payment penalty, administrative fee, fine, assessment, and costs of collection as provided by law.

Added Sec. 8, Ch. 739, Stats. 1995. Effective January 1, 1996.

#### **Toll Evasion Processing Agency: Definition**

40253. If a contract is entered into pursuant to Section 40252, for the purpose of this article, "processing agency" means the party responsible for the processing of the notices of toll evasions and notices of delinquent toll evasions. Absent such contract, "processing agency" shall be synonymous with "issuing agency."

Added Sec. 8, Ch. 739, Stats. 1995. Effective January 1, 1996.

#### **Toll Evasion: Notice of Violation**

40254. (a) If a vehicle is found, by automated devices, by visual observation, or otherwise, to have evaded tolls on any toll road or toll bridge, and subdivision (d) of Section 40250 does not apply, an issuing agency or a processing agency, as the case may be, shall, within 21 days of the violation, forward to the registered owner a notice of toll evasion violation setting forth the violation, including reference to the section violated, the approximate time thereof, and the location where the violation occurred. If accurate information concerning the identity and address of the registered owner is not available to the processing agency within 21 days of the violation, the processing agency shall have an additional 45 calendar days to obtain such information and forward the notice of toll evasion violation. Where the registered owner is a repeat violator, the processing agency shall forward the notice of toll evasion violation within 90 calendar days of the violation. "Repeat violator" means any registered owner for whom more than five violations have been issued pursuant to this section in any calendar month within the preceding 12-month period. The notice of toll evasion violation shall also set forth the following:

- (1) The vehicle license plate number.
- (2) If practicable, the registration expiration date and the make of the vehicle.
- (3) A clear and concise explanation of the procedures for contesting the violation and appealing an adverse decision pursuant to Sections 40255 and 40256.

(b) Once the authorized person has notified the processing agency of a toll evasion violation, the processing agency shall prepare and forward the notice of violation to the registered owner of the vehicle cited for the violation. Any person, including the authorized person and any member of the person's department or agency, or any peace officer who, with intent to prejudice, damage, or defraud, is found guilty of altering, concealing, modifying, nullifying, or destroying, or causing to be altered, concealed, modified, nullified, or destroyed, the face of the original or any copy of a notice that was retained by the authorized person before it is filed with the processing agency or with a person authorized to receive the deposit of the toll evasion violation is guilty of a misdemeanor.

(c) If, after a copy of the notice of toll evasion violation has been sent to the registered owner, the issuing person determines that, due to a failure of proof of apparent violation, the notice of toll evasion violation should be dismissed, the issuing agency may recommend, in writing, that the charges be dismissed. The recommendation shall cite the reasons for the recommendation and shall be filed with the processing agency.

(d) If the processing agency makes a finding that there are

grounds for dismissal, the notice of toll evasion violation shall be canceled pursuant to Section 40255.

(e) Under no circumstances shall a personal relationship with any law enforcement officer, public official, law enforcement agency, processing agency or toll operating agency or entity be grounds for dismissal of the violation.

The processing agency shall use its best efforts to obtain accurate information concerning the identity and address of the registered owner for the purpose of forwarding a notice of toll evasion violation pursuant to subdivision (a).

Amended Sec. 1, Ch. 184, Stats. 2002. Effective January 1, 2003.

### ***Toll Evasion: Administrative Review***

40255. (a) Within 21 days from the issuance of the notice of toll evasion violation, or within 15 days from the mailing of the notice of delinquent toll evasion, whichever occurs later, a person may contest a notice of toll evasion violation or a notice of delinquent toll evasion. In that case, the processing agency shall do the following:

(1) The processing agency shall either investigate with its own records and staff or request that the issuing agency investigate the circumstances of the notice with respect to the contestant's written explanation of reasons for contesting the toll evasion violation. If, based upon the results of that investigation, the processing agency is satisfied that the violation did not occur or that the registered owner was not responsible for the violation, the processing agency shall cancel the notice of toll evasion violation and make an adequate record of the reasons for canceling the notice. The processing agency shall mail the results of the investigation to the person who contested the notice of toll evasion violation or the notice of delinquent toll evasion violation.

(2) If the person contesting a notice of toll evasion violation or notice of delinquent toll evasion violation is not satisfied with the results of the investigation provided for in paragraph (1), the person may, within 15 days of the mailing of the results of the investigation, deposit the amount of the toll evasion penalty and request an administrative review. After January 1, 1996, an administrative hearing shall be held within 90 calendar days following the receipt of a request for an administrative hearing, excluding any time tolled pursuant to this article. The person requesting the hearing may request one continuance, not to exceed 21 calendar days.

(b) The administrative review procedure shall consist of the following:

(1) The person requesting an administrative review shall indicate to the processing agency his or her election for a review by mail or personal conference.

(2) If the person requesting an administrative review is a minor, that person shall be permitted to appear at an administrative review or admit responsibility for a toll evasion violation without the necessity of the appointment of a guardian. The processing agency may proceed against that person in the same manner as if that person were an adult.

(3) The administrative review shall be conducted before a reviewer designated to conduct the review by the issuing agency's governing body or chief executive officer. In the case of violations on facilities developed pursuant to Section 143 of the Streets and Highways Code, the processing agency shall contract with a public agency or a private entity that has no

financial interest in the facility for the provision of administrative review services pursuant to this subdivision. The costs of those administrative review services shall be included in the administrative fees authorized by this article.

In addition to any other requirements of employment, a reviewer shall demonstrate those qualifications, training, and objectivity prescribed by the issuing agency's governing body or chief executive as are necessary and which are consistent with the duties and responsibilities set forth in this article.

The examiner's continued employment, performance evaluation, compensation, and benefits shall not be directly or indirectly linked to the amount of fines collected by the examiner.

(4) The officer or person authorized to issue a notice of toll evasion violation shall not be required to participate in an administrative review. The issuing agency shall not be required to produce any evidence other than the notice of toll evasion violation or copy thereof, information received from the department identifying the registered owner of the vehicle, and a statement under penalty of perjury from the person reporting the violations. The documentation in proper form shall be considered prima facie evidence of the violation.

(5) The review shall be conducted in accordance with the written procedure established by the processing agency which shall ensure fair and impartial review of contested toll evasion violations. The agency's final decision may be delivered personally or by first-class mail.

Added Sec. 8, Ch. 739, Stats. 1995. Effective January 1, 1996.

### ***Toll Evasion Penalty: Appeal of Administrative Review to Court***

40256. (a) Within 20 days after the mailing of the final decision described in subdivision (b) of Section 40255, the contestant may seek review by filing an appeal to the court, where the same shall be heard de novo, except that the contents of the processing agency's file in the case on appeal shall be received in evidence. A copy of the notice of toll evasion violation shall be admitted into evidence as prima facie evidence of the facts stated therein. A copy of the notice of appeal shall be served in person or by first-class mail upon the processing agency by the contestant. For purposes of computing the 20-day period, Section 1013 of the Code of Civil Procedure shall be applicable. A proceeding under this subdivision is a limited civil case.

(b) Notwithstanding Section 72055 of the Government Code, the fee for filing the notice of appeal shall be twenty-five dollars (\$25). If the appellant prevails, this fee, together with any deposit of toll evasion penalty, shall be promptly refunded by the processing agency in accordance with the judgment of the court.

(c) The conduct of the hearing on appeal under this section is a subordinate judicial duty which may be performed by commissioners and other subordinate judicial officials at the direction of the presiding judge of the court.

(d) If no notice of appeal of the processing agency's decision is filed within the period set forth in subdivision (a), the decision shall be deemed final.

(e) If the toll evasion penalty has not been deposited and the decision is adverse to the contestant, the processing agency may, promptly after the decision becomes final,

proceed to collect the penalty under Section 40267.

Amended Sec. 460, Ch. 931, Stats. 1998. Effective September 28, 1998.  
Amended Sec. 602, Ch. 784, Stats. 2002. Effective January 1, 2003.

#### ***Toll Evasion: Notice of Penalty Due***

40257. The notice of toll evasion violation shall be accompanied by a written notice of the toll evasion penalty due for that violation and the address of the person authorized to receive a deposit of the toll evasion penalty, to whom payments may be sent, and a statement in bold print that payments of the toll evasion penalty for the toll evasion violation may be sent through the mail.

Added Sec. 8, Ch. 739, Stats. 1995. Effective January 1, 1996.

#### ***Toll Evasion: Penalty Schedule***

40258. (a) The schedule of toll evasion penalties for toll evasion violations shall be limited to one hundred dollars (\$100) for the first violation, two hundred fifty dollars (\$250) for a second violation within one year, and five hundred dollars (\$500) for each additional violation within one year.

(b) Toll evasion penalties under this Article shall be collected as civil penalties.

Added Sec. 8, Ch. 739, Stats. 1995. Effective January 1, 1996.

#### ***Toll Evasion: Termination of Proceedings***

40259. If the toll evasion penalty is received by the person authorized to receive the deposit of the toll evasion penalty and there is no contest as to that toll evasion violation, the proceedings under this Article shall terminate.

Added Sec. 8, Ch. 739, Stats. 1995. Effective January 1, 1996.

#### ***Toll Evasion: Notice of Delinquent Violation***

40260. (a) If the payment of the toll evasion penalty is not received by the person authorized to receive a deposit of the toll evasion penalty by the time and date fixed for appearance on the notice of toll evasion violation under Section 40254, the processing agency shall serve or mail to the registered owner a notice of delinquent toll evasion violation.

(b) Delivery of a notice of delinquent toll evasion violation under this section may be made by personal service or by first-class mail addressed to the registered owner.

Added Sec. 8, Ch. 739, Stats. 1995. Effective January 1, 1996.

#### ***Delinquent Notice: Copies of Notice of Violation***

40261. (a) Within 10 days from the mailing of a notice of delinquent toll evasion violation, any person or his or her agent, may request by mail or in person a photostatic copy or an electronically produced facsimile of the original notice of toll evasion violation. The issuing agency may charge a fee sufficient to recover the actual cost of providing the copy, not to exceed two dollars (\$2). Within 15 days of the request, the processing agency shall mail or otherwise provide the copy. Until the issuing agency complies with a request for a copy of the original notice of toll evasion violation, the processing agency may not proceed pursuant to subdivision (i) of Section 22651, or Section 22651.7 or 40267.

(b) If the description of the vehicle on the notice of toll evasion violation does not match the department's corresponding vehicle registration record, the processing agency may, on written request of the person, cancel the notice of toll evasion violation without the necessity of an appearance by that person.

Added Sec. 8, Ch. 739, Stats. 1995. Effective January 1, 1996.

#### ***Delinquent Toll Evasion: Effect on Vehicle Registration***

40262. The notice of delinquent toll evasion violation shall contain the information specified in Section 40254 and, additionally shall contain a notice to the registered owner that, unless the registered owner pays the toll evasion penalty or contests the notice within 15 days after mailing of the notice of delinquent toll evasion violation or completes and files an affidavit of nonliability which complies with Section 40263 or 40264, the renewal of the vehicle registration shall be contingent upon compliance with the notice of delinquent toll evasion violation. If the registered owner, by appearance or by mail, makes payment to the processing agency within 15 days of the mailing of the notice of delinquent toll evasion violation, the toll evasion penalty shall consist of the amount of the original penalty without any additional administrative fees or charges.

Added Sec. 8, Ch. 739, Stats. 1995. Effective January 1, 1996.

#### ***Toll Evasion: Failure to Pay or Contest***

40262.5. If the registered owner fails to pay the toll evasion penalty, as required in Section 40262, or fails to contest the violation, as provided in Section 40255, the registered owner shall be deemed liable for the violation by operation of law, and the toll evasion penalty and any administrative fees or charges shall be considered a debt due and owing the issuing agency by the registered owner.

Added Sec. 8, Ch. 739, Stats. 1995. Effective January 1, 1996.

#### ***Toll Evasion: Delinquent Notice to Include Nonliability Information***

40263. The notice of delinquent toll evasion violation shall contain, or be accompanied with, an affidavit of nonliability and information of what constitutes nonliability, information as to the effect of executing the affidavit, and instructions for returning the affidavit to the issuing agency.

Added Sec. 8, Ch. 739, Stats. 1995. Effective January 1, 1996.

#### ***Toll Evasion: Rental or Leased Vehicle: Affidavit of Nonliability***

40264. If the affidavit of nonliability is returned to the agency within 30 days of the mailing of the notice of toll evasion violation together with the proof of a written rental agreement or lease between a bona fide renting or leasing company and its customer which identifies the rentee or lessee and provides the driver's license number, name, and address of the rentee or lessee, the processing agency shall serve or mail to the rentee or lessee identified in the affidavit of nonliability a notice of delinquent toll evasion violation. If payment is not received within 15 days of the mailing of the notice of delinquent toll evasion violation, the processing agency may proceed against the rentee or lessee pursuant to Section 40267.

Added Sec. 8, Ch. 739, Stats. 1995. Effective January 1, 1996.

#### ***Toll Evasion: Vehicle Sold: Affidavit of Nonliability***

40265. (a) If the affidavit of nonliability is returned with evidence that the registered owner served has made a bona fide sale or transfer of the vehicle and has delivered possession thereof to the purchaser prior to the date of the alleged violation, the processing agency shall obtain verification from the department that the registered owner has complied with subdivision (b) of Section 5602.

(b) If the registered owner has complied with subdivision

(b) of Section 5602, the processing agency shall cancel the notice of toll evasion violation with respect to the registered owner.

(c) If the registered owner has not complied with subdivision (b) of Section 5602, the processing agency shall inform the registered owner that the notice shall be paid in full or contested pursuant to Section 40255. If the registered owner does not comply, the processing agency shall proceed pursuant to Section 40267.

Added Sec. 8, Ch. 739, Stats. 1995. Effective January 1, 1996.

***Toll Evasion: Processing Agency's Obligations Upon Payment of Penalty***

40266. (a) If the registered owner, or an agent of the registered owner, or a rentee or lessee who was served with the notice of delinquent toll evasion violation pursuant to Section 40260 or 40264, or any other person who presents the notice of toll evasion violation or notice of delinquent toll evasion violation after the notice of delinquent toll evasion violation has been issued for delivery under Section 40260, deposits that toll evasion violation penalty with a person authorized to receive it, the processing agency shall do both of the following:

(1) Deliver a copy of the notice of delinquent toll evasion violation issued under Section 40260, or a listing of the notice information presented in a notice of delinquent toll evasion violation to the person and record the name, address, and driver's license number of the person actually given the copy in the records of the issuing agency.

For the purposes of this paragraph, a copy of the notice of delinquent toll evasion violation may be a photostatic copy.

(2) Determine whether the notice of delinquent toll evasion violation has been filed with the department pursuant to subdivision (b) of Section 40267 or a civil judgment has been entered pursuant to Section 40267.

(b) If the notice of delinquent toll evasion violation has not been filed with the department or judgment entered and payment of the toll evasion penalty and any applicable assessments is received, the proceedings under this Article shall terminate.

(c) If the notice of delinquent toll evasion violation has been filed with the department, has been returned to the processing agency pursuant to subdivision (b) or (c) of Section 4770 or pursuant to Section 4774, and payment of the toll evasion penalty together with the administrative service fee of the processing agency for costs of service and any applicable assessment is received, the proceedings under this Article shall terminate.

(d) If the notice of delinquent toll evasion violation has been filed with the department and has not been returned to the processing agency pursuant to Section 4770, 4772, or 4774, and payment of the toll evasion penalty together with the administrative fee of the department established under Section 4773, and administrative service fee of the issuing agency for costs of service, and any applicable assessments is received by the processing agency, the processing agency shall do all of the following:

(1) Immediately transmit the payment information to the department in the manner prescribed by the department.

(2) Terminate proceedings on the notice of delinquent toll evasion violation.

(3) Transmit for deposit all toll evasion penalties and assessments in accordance with law.

Added Sec. 8, Ch. 739, Stats. 1995. Effective January 1, 1996.

***Unpaid Toll Evasion Penalty: Collection Procedure***

40267. Except as otherwise provided in Sections 40268 and 40269, the processing agency shall proceed under one or more of the following options to collect an unpaid toll evasion penalty:

(a) The processing agency may file an itemization of unpaid toll evasion penalties and administrative and service fees with the department for collection with the registration of the vehicle pursuant to Section 4770.

(b) If more than four hundred dollars (\$400) in unpaid penalties and fees have been accrued by any person or registered owner, the processing agency may file proof of that fact with the court with the same effect as a civil judgment. Execution may be levied and other measures may be taken for the collection of the judgment as are authorized for the collection of an unpaid civil judgment entered against a defendant in an action on a debtor. The court may assess costs against a judgment debtor to be paid upon satisfaction of the judgment. The processing agency shall send a notice by first-class mail to the person or registered owner indicating that a judgment shall be entered for the unpaid penalties, fees, and costs and that, after 30 days from the date of the mailing of the notice, the judgment shall have the same effect as an entry of judgment against a judgment debtor. The person or registered owner shall also be notified at that time that execution may be levied against his or her assets, liens may be placed against his or her property, his or her wages may be garnished, and other steps may be taken to satisfy the judgment. The filing fee plus any costs of collection shall be added to the judgment amount.

Notwithstanding any other provision of law, the processing agency shall pay the established first paper civil filing fee, if required by law, at the time an entry of civil judgment is requested.

(c) If the registration of the vehicle has not been renewed for 60 days beyond the renewal date, and the notice has not been collected by the department pursuant to Section 4770, the processing agency may file proof of unpaid penalties and fees with the court with the same effect as a civil judgment as provided in subdivision (b), except that if the amount of the unpaid penalties and fees is not more than four hundred dollars (\$400), the filing fee shall be collectible by the court from the debtor.

(d) The issuing agency may contract with a collection agency to collect unpaid toll evasion penalties, fees, and charges.

Added Sec. 8, Ch. 739, Stats. 1995. Effective January 1, 1996.

***Toll Evasion: Civil Judgment***

40268. The processing agency shall not file a civil judgment with the court relating to a toll evasion violation which has been filed with the department unless the processing agency has determined that the registration of the vehicle has not been renewed for 60 days beyond the renewal date and the notice has not been collected by the department pursuant to Section 4770.

Added Sec. 8, Ch. 739, Stats. 1995. Effective January 1, 1996.

**Toll Evasion: Terminating Proceedings**

40269. The processing agency shall terminate proceedings on the notice of delinquent toll evasion violation in any of the following cases:

(a) Upon receipt of collected penalties and administrative fees remitted by the department under Section 4772 for that notice of delinquent toll evasion violation. The termination under this subdivision is by satisfaction of the toll evasion penalty.

(b) If the notice of delinquent toll evasion violation was returned to the processing agency pursuant to Section 4774 and five years have elapsed since the date of the violation. The termination under this subdivision is by the running of a statute of limitation of proceedings.

(c) The processing agency receives information, which it shall verify with the department, that the penalty has been paid to the department pursuant to Section 4772.

Added Sec. 8, Ch. 739, Stats. 1995. Effective January 1, 1996.

**Toll Evasion: Delinquent Notice Cancellation**

40270. If the notice of delinquent toll evasion violation is filed with the department pursuant to subdivision (b) of Section 40267 and the department returns the notice of delinquent toll evasion violation by notice of noncollection pursuant to subdivision (b) of Section 4770 or Section 4774, the processing agency may cancel the notice of delinquent toll evasion violation.

Added Sec. 8, Ch. 739, Stats. 1995. Effective January 1, 1996.

**Toll Evasion: Tolling of Civil Action**

40271. The time limitation provided by law for commencement of a civil action for a violation specified in Section 40250 shall be tolled from and after the date a notice of delinquent toll evasion violation is filed with the department pursuant to subdivision (b) of Section 40267 until the notice is returned to the processing agency under subdivision (b) of Section 4770, or Section 4772 or 4774, or is recalled by the processing agency pursuant to subdivision (b) of Section 40255.

Added Sec. 8, Ch. 739, Stats. 1995. Effective January 1, 1996.

**Toll Evasion: Driving Record**

40272. Notwithstanding any other provision of law, an imposition of civil liability for a violation of Section 23302.5 shall not be deemed a conviction of a driver, rentee, lessee, or registered owner and shall not be made part of the driving record of the person upon whom that liability is imposed, nor shall it be used for insurance purposes in connection with the provision of motor vehicle insurance coverage.

Added Sec. 8, Ch. 739, Stats. 1995. Effective January 1, 1996.

**Toll Evasion: Confidentiality of Information**

40273. Any information obtained pursuant to this Article through the use of automated devices shall not be used for any purpose other than to identify, and obtain the mailing address information of, toll evasion violators, to facilitate the serving of notices of toll evasion violations and notices of delinquent toll evasion violations.

Added Sec. 8, Ch. 739, Stats. 1995. Effective January 1, 1996.

## CHAPTER 2. PROCEDURE ON ARRESTS

## Article 1. Arrests

**Application of Chapter**

40300. The provisions of this chapter shall govern all peace officers in making arrests for violations of this code without a warrant for offenses committed in their presence, but the procedure prescribed herein shall not otherwise be exclusive of any other method prescribed by law for the arrest and prosecution of a person for an offense of like grade.

**Violation Involving Commercial Motor Vehicle**

40300.2. Whenever a person is arrested for a violation of this code, or a violation of any other statute required to be reported under Section 1803, the written complaint, notice to appear in court, or other notice of violation, shall indicate whether the vehicle involved in the offense is a commercial motor vehicle, as defined in subdivision (b) of Section 15210.

Added Ch. 1509, Stats. 1988. Effective January 1, 1989.

**Arrest Without Warrant**

40300.5. In addition to the authority to make an arrest without a warrant pursuant to paragraph (1) of subdivision (a) of Section 836 of the Penal Code, a peace officer may, without a warrant, arrest a person when the officer has reasonable cause to believe that the person had been driving while under the influence of an alcoholic beverage or any drug, or under the combined influence of an alcoholic beverage and any drug when any of the following exists:

(a) The person is involved in a traffic accident.

(b) The person is observed in or about a vehicle that is obstructing a roadway.

(c) The person will not be apprehended unless immediately arrested.

(d) The person may cause injury to himself or herself or damage property unless immediately arrested.

(e) The person may destroy or conceal evidence of the crime unless immediately arrested.

Amended Sec. 6, Ch. 1078, Stats. 1996. Effective January 1, 1997.

**Place of Arrest: Driving Under the Influence**

40300.6. Section 40300.5 shall be liberally interpreted to further safe roads and the control of driving while under the influence of an alcoholic beverage or any drug in order to permit arrests to be made pursuant to that section within a reasonable time and distance away from the scene of a traffic accident.

The enactment of this section during the 1985 86 Regular Session of the Legislature does not constitute a change in, but is declaratory of, the existing law.

Added Ch. 584, Stats. 1986. Effective January 1, 1987.

**Procedure**

40301. Except as provided in this chapter, whenever a person is arrested for any violation of this code declared to be a felony, he shall be dealt with in like manner as upon arrest for the commission of any other felony.

**Mandatory Appearance**

40302. Whenever any person is arrested for any violation of this code, not declared to be a felony, the arrested person shall be taken without unnecessary delay before a magistrate within the county in which the offense charged is alleged to



have been committed and who has jurisdiction of the offense and is nearest or most accessible with reference to the place where the arrest is made in any of the following cases:

(a) When the person arrested fails to present his driver's license or other satisfactory evidence of his identity for examination.

(b) When the person arrested refuses to give his written promise to appear in court.

(c) When the person arrested demands an immediate appearance before a magistrate.

(d) When the person arrested is charged with violating Section 23152.

Amended Ch. 53, Stats. 1982. Effective February 18, 1982.

### **Arrest of Minor**

40302.5. Whenever any person under the age of 18 years is taken into custody in connection with any traffic infraction case, and he is not taken directly before a magistrate, he shall be delivered to the custody of the probation officer. Unless sooner released, the probation officer shall keep the minor in the juvenile hall pending his appearance before a magistrate. When a minor is cited for an offense not involving the driving of a motor vehicle, the minor shall not be taken into custody pursuant to subdivision (a) of Section 40302 solely for failure to present a driver's license.

Added Ch. 1299, Stats. 1980. Effective January 1, 1981.

### **Optional Appearance Before a Magistrate**

40303. (a) Whenever ( ) <sup>1</sup> **a** person is arrested for any of the offenses listed in subdivision (b) and the arresting officer is not required to take the person without unnecessary delay before a magistrate, the arrested person shall, in the judgment of the arresting officer, either be given a 10 days' notice to appear, or be taken without unnecessary delay before a magistrate within the county in which the offense charged is alleged to have been committed and who has jurisdiction of the offense and is nearest or most accessible with reference to the place where the arrest is made. The officer may require that the arrested person, if he or she ( ) <sup>2</sup> **does not have** satisfactory identification, place a right thumbprint, or a left thumbprint or fingerprint if the person has a missing or disfigured right thumb, on the 10 days' notice to appear when a 10 days' notice is provided. Except for law enforcement purposes relating to the identity of the arrestee, ( ) <sup>3</sup> **a** person or entity ( ) <sup>4</sup> **shall not** sell, give away, allow the distribution of, include in a database, or create a database with, this print.

(b) Subdivision (a) applies to the following offenses:

(1) Section 10852 or 10853, relating to injuring or tampering with a vehicle.

(2) Section 23103 or 23104, relating to reckless driving.

(3) Subdivision (a) of Section 2800, insofar as it relates to a failure or refusal of the driver of a vehicle to stop and submit to an inspection or test of the lights upon the vehicle ( ) <sup>5</sup> **pursuant to Section 2804, that** is punishable as a misdemeanor.

(4) Subdivision (a) of Section 2800, insofar as it relates to a failure or refusal of the driver of a vehicle to stop and submit to a brake test ( ) <sup>6</sup> **that** is punishable as a misdemeanor.

(5) Subdivision (a) of Section 2800, relating to the refusal

to submit vehicle and load to an inspection, measurement, or weighing as prescribed in Section 2802 or a refusal to adjust the load or obtain a permit as prescribed in Section 2803. .

(6) Subdivision (a) of Section 2800, insofar as it relates to ( ) <sup>1</sup> **a** driver who continues to drive after being lawfully ordered not to drive by a member of the **Department of the California Highway Patrol** for violating the driver's hours of service or driver's log regulations adopted pursuant to subdivision (a) of Section 34501.

(7) Subdivision (b), (c), or (d) of Section 2800, relating to a failure or refusal to comply with ( ) <sup>1</sup> **a** lawful out-of-service order.

(8) Section 20002 or 20003, relating to duties in the event of an accident.

(9) Section 23109, relating to participating in **a** speed ( ) <sup>7</sup> **contest** or exhibition of speed.

(10) Section 14601, 14601.1, 14601.2, or 14601.5, relating to driving while ( ) <sup>8</sup> **the privilege to operate a motor vehicle** is suspended or revoked.

(11) When the person arrested has attempted to evade arrest.

(12) Section 23332, relating to persons upon vehicular crossings.

(13) Section 2813, relating to the refusal to stop and submit a vehicle to an inspection of its size, weight, and equipment.

(14) Section 21461.5, insofar as it relates to a pedestrian who, after being cited for a violation of Section 21461.5, is, within 24 hours, again found upon the freeway in violation of Section 21461.5 and thereafter refuses to leave the freeway after being lawfully ordered to do so by a peace officer and after having been informed that his or her failure to leave could result in his or her arrest.

(15) Subdivision (a) of Section 2800, insofar as it relates to a pedestrian who, after having been cited for a violation of subdivision (a) of Section 2800 for failure to obey a lawful order of a peace officer issued pursuant to Section 21962, is within 24 hours again found upon the bridge or overpass and thereafter refuses to leave after being lawfully ordered to do so by a peace officer and after having been informed that his or her failure to leave could result in his or her arrest.

(16) Section 21200.5, relating to riding a bicycle while under the influence of an alcoholic beverage or ( ) <sup>1</sup> **a** drug.

(17) Section 21221.5, relating to operating a motorized scooter while under the influence of an alcoholic beverage or ( ) <sup>1</sup> **a** drug.

(c) (1) A person contesting a charge by claiming under penalty of perjury not to be the person issued the notice to appear may choose to submit a right thumbprint, or a left thumbprint if the person has a missing or disfigured right thumb, to the issuing court through his or her local law enforcement agency for comparison with the one placed on the notice to appear. A local law enforcement agency providing this service may charge the requester no more than the actual costs. The issuing court may refer the thumbprint submitted and the notice to appear to the prosecuting attorney for comparison of the thumbprints. When there is no thumbprint or fingerprint on the notice to appear, or when

the comparison of thumbprints is inconclusive, the court shall refer the notice to appear or copy thereof back to the issuing agency for further investigation, unless the court finds that referral is not in the interest of justice.

(2) Upon initiation of the investigation or comparison process by referral of the court, the court shall continue the case and the speedy trial period shall be tolled for 45 days.

(3) Upon receipt of the issuing agency's or prosecuting attorney's response, the court may make a finding of factual innocence pursuant to Section 530.6 of the Penal Code if the court determines that there is insufficient evidence that the person cited is the person charged and shall immediately notify the Department of Motor Vehicles of its determination. If the Department of Motor Vehicles determines the citation or citations in question formed the basis of a suspension or revocation of the person's driving privilege, the department shall immediately set aside the action.

(4) If the prosecuting attorney or issuing agency fails to respond to a court referral within 45 days, the court shall make a finding of factual innocence pursuant to Section 530.6 of the Penal Code, unless the court finds that a finding of factual innocence is not in the interest of justice.

(5) The citation or notice to appear may be held by the prosecuting attorney or issuing agency for future adjudication should the arrestee who received the citation or notice to appear be found.

Amended Sec. 52, Ch. 724, Stats. 1999. Effective January 1, 2000.  
Amended Sec. 14, Ch. 860, Stats. 2000. Effective January 1, 2001.  
Amended Sec. 4, Ch. 467, Stats. 2003. Effective January 1, 2004.  
Amended Sec. 19, Ch. 288, Stats. 2006. Effective January 1, 2007.  
The 2006 amendment added the italicized material, and at the point(s) indicated, deleted the following:

1. "any"
2. "has no"
3. "no"
4. "may"
5. "under Section 2804 hereof, which"
6. "which"
7. "contests"
8. "license"

#### **Notice to Correct Violation for Specified Infractions**

40303.5. Whenever any person is arrested for any of the following offenses, the arresting officer shall permit the arrested person to execute a notice containing a promise to correct the violation in accordance with the provisions of Section 40610 unless the arresting officer finds that any of the disqualifying conditions specified in subdivision (b) of Section 40610 exist:

(a) Any registration infraction set forth in Division 3 (commencing with Section 4000).

(b) Any driver's license infraction set forth in Division 6 (commencing with Section 12500), and subdivision (a) of Section 12951, relating to possession of driver's license.

(c) Section 21201, relating to bicycle equipment.

(d) Any infraction involving equipment set forth in Division 12 (commencing with Section 24000), Division 13 (commencing with Section 29000), Division 14.8 (commencing with Section 34500), Division 16 (commencing with Section 36000), Division 16.5 (commencing with Section 38000), and Division 16.7 (commencing with Section 39000).

Amended Ch. 258, Stats. 1992. Effective January 1, 1993.

#### **Discretionary Procedure**

40304. Whenever any person is arrested by any member

of the California Highway Patrol for any violation of any state law regulating the operation of vehicles or the use of the highways declared to be a misdemeanor but which offense is not specified in this code, he shall, in the judgment of the arresting officer, either be given a 10-day notice to appear in the manner provided in this chapter or be taken without unnecessary delay before a magistrate within the county in which the offense charged is alleged to have been committed and who has jurisdiction of the offense and is nearest or most accessible with reference to the place where the arrest is made, or, upon demand of the person arrested, before a magistrate in the judicial district in which the offense is alleged to have been committed.

#### **Arrest on Warrant: Bail**

40304.5. Notwithstanding any other provision of law, whenever any person is taken into custody for bail to be collected on two or fewer outstanding warrants for failure to appear on a citation for a parking offense or a traffic infraction, the person shall be provided the opportunity immediately to post bail, and shall not be booked, photographed, or fingerprinted, nor shall an arrest record be made, when the amount of bail required to be paid on the warrant may be ascertained by reference to the face thereof or to a fixed schedule of bail, unless and until all of the following requirements have been exhausted:

(a) If the person has sufficient cash in his or her possession, that person shall be given the opportunity immediately to post bail with the person in charge of the jail or his or her designee.

(b) If the person does not have sufficient cash in his or her possession, that person shall be informed of his or her rights and given the opportunity to do all of the following:

(1) Make not less than three completed telephone calls to obtain bail. The person shall be permitted the use of the police or sheriff's department telephone to make not less than three completed local or collect long-distance telephone calls to obtain bail.

(2) Have not less than three hours in which to arrange for the deposit of bail.

Added Ch. 35, Stats. 1984. Effective March 31, 1984.

#### **Offense by Nonresident**

40305. (a) Whenever a nonresident is arrested for violating any section of this code while driving a motor vehicle and does not furnish satisfactory evidence of identity and an address within this state at which he or she can be located, he or she may, in the discretion of the arresting officer, be taken immediately before a magistrate within the county where the offense charged is alleged to have been committed, and who has jurisdiction over the offense and is nearest or most accessible with reference to the place where the arrest is made. If the magistrate is not available at the time of the arrest and the arrested person is not taken before any other person authorized to receive a deposit of bail, and if the arresting officer does not have the authority or is not required to take the arrested person before a magistrate or other person authorized to receive a deposit of bail by some other provision of law, the officer may require the arrested person, if he or she has no satisfactory identification, to place a right thumbprint, or a left thumbprint or fingerprint if the

person has a missing or disfigured right thumb, on the notice to appear as provided in Article 2 (commencing with Section 40500).

Except for law enforcement purposes relating to the identity of the arrestee, no person or entity may sell, give away, allow the distribution of, include in a database, or create a database with, this print.

(b) (1) A person contesting a charge by claiming under penalty of perjury not to be the person issued the notice to appear may choose to submit a right thumbprint, or a left thumbprint if the person has a missing or disfigured right thumb, to the issuing court through his or her local law enforcement agency for comparison with the one placed on the notice to appear. A local law enforcement agency providing this service may charge the requester no more than the actual costs. The issuing court may refer the thumbprint submitted and the notice to appear to the prosecuting attorney for comparison of the thumbprints. When there is no thumbprint or fingerprint on the notice to appear, or when the comparison of thumbprints is inconclusive, the court shall refer the notice to appear or copy thereof back to the issuing agency for further investigation, unless the court finds that referral is not in the interest of justice.

(2) Upon initiation of the investigation or comparison process by referral of the court, the court shall continue the case and the speedy trial period shall be tolled for 45 days.

(3) Upon receipt of the issuing agency's or prosecuting attorney's response, the court may make a finding of factual innocence pursuant to Section 530.6 of the Penal Code if the court determines that there is insufficient evidence that the person cited is the person charged and shall immediately notify the Department of Motor Vehicles of its determination. If the Department of Motor Vehicles determines the citation or citations in question formed the basis of a suspension or revocation of the person's driving privilege, the department shall immediately set aside the action.

(4) If the prosecuting attorney or issuing agency fails to respond to a court referral within 45 days, the court shall make a finding of factual innocence pursuant to Section 530.6 of the Penal Code, unless the court determines that a finding of factual innocence is not in the interest of justice.

(5) The citation or notice to appear may be held by the prosecuting attorney or issuing agency for future adjudication should the arrestee who received the citation or notice to appear be found.

Amended Sec. 5, Ch. 467, Stats. 2003. Effective January 1, 2004.

#### **Offense by Nonresident: Commercial Vehicles**

40305.5. (a) Whenever a nonresident is arrested for violating any section of this code while driving a commercially registered motor vehicle, excluding house cars, with an unladen weight of 7,000 pounds or more, and does not furnish satisfactory evidence of identity and an address within this state at which he or she can be located, the arresting officer may, in lieu of the procedures set forth in Section 40305, accept a guaranteed traffic arrest bail bond certificate, and the nonresident shall be released from custody upon giving a written promise to appear as provided in Article 2 (commencing with Section 40500). The officer may require the arrested person, if he or she has no satisfactory identification, to place a right thumbprint, or a

left thumbprint or fingerprint if the person has a missing or disfigured right thumb, on the notice to appear as provided in Article 2 (commencing with Section 45000). Except for law enforcement purposes relating to the identity of the arrestee, no person or entity may sell, give away, allow the distribution of, include in a database, or create a database with, this print.

(b) Every guaranteed traffic arrest bail bond certificate shall contain all of the following information:

(1) The name and address of the surety and of the issuer, if other than the surety.

(2) The name, address, driver's license number and signature of the individual covered by the certificate.

(3) The maximum amount guaranteed.

(4) Exclusions from coverage.

(5) A statement that the issuing company guarantees the appearance of a person to whom a guaranteed traffic arrest bail bond certificate is issued and, in the event of failure of the person to appear in court at the time of trial, the issuing company shall pay any fine or forfeiture imposed on the person, not to exceed the amount stated on the certificate.

(6) The expiration date of the certificate.

(c) A guaranteed traffic arrest bail bond certificate may be issued by a surety admitted in this state. The certificate may also be issued by an association of motor carriers if all of the following conditions are met:

(1) The association is incorporated, or authorized to do business, in this state.

(2) The association is covered by a guaranteed traffic arrest bail bond issued by a surety admitted in this state.

(3) The association agrees to pay fines or bail assessed against the guaranteed traffic arrest bail bond certificate.

(4) The surety guarantees payment of fines or bail assessed against the guaranteed traffic arrest bail bond certificates issued by the association.

(d) The arresting officer shall file the guaranteed traffic arrest bail bond certificate with the notice to appear required to be filed by Section 40506.

(e) A "guaranteed traffic arrest bail bond certificate" is a document which guarantees the payment of fines or bail assessed against an individual for violation of this code, except driving while under the influence of alcohol or drugs, driving without a license or driving with a suspended or revoked license, operating a motor vehicle without the permission of the owner, or any violation punishable as a felony.

(f) A "guaranteed traffic arrest bail bond" is a bond issued by a surety guaranteeing the obligations of the issuer of guaranteed traffic arrest bail bond certificates. The bond shall be in the amount of fifty thousand dollars (\$50,000) and shall be filed with the Secretary of State. Any court in this state may assess against the surety the amount of covered fines or bail which the issuer of a guaranteed traffic arrest bail bond certificate fails to pay.

(g) (1) A person contesting a charge by claiming under penalty of perjury not to be the person issued the notice to appear may choose to submit a right thumbprint, or a left thumbprint if the person has a missing or disfigured right thumb, to the issuing court through his or her local law enforcement agency for comparison with the one placed on the notice to appear. A local law enforcement agency

providing this service may charge the requester no more than the actual costs. The issuing court may refer the thumbprint submitted and the notice to appear to the prosecuting attorney for comparison of the thumbprints. When there is no thumbprint or fingerprint on the notice to appear, or when the comparison of thumbprints is inconclusive, the court shall refer the notice to appear or copy thereof back to the issuing agency for further investigation, unless the court finds that referral is not in the interest of justice.

(2) Upon initiation of the investigation or comparison process by referral of the court, the court shall continue the case and the speedy trial period shall be tolled for 45 days.

(3) Upon receipt of the issuing agency's or prosecuting attorney's response, the court may make a finding of factual innocence pursuant to Section 530.6 of the Penal Code if the court determines that there is insufficient evidence that the person cited is the person charged and shall immediately notify the Department of Motor Vehicles of its determination. If the Department of Motor Vehicles determines the citation or citations in question formed the basis of a suspension or revocation of the person's driving privilege, the department shall immediately set aside the action.

(4) If the prosecuting attorney or issuing agency fails to respond to a court referral within 45 days, the court shall make a finding of factual innocence pursuant to Section 530.6 of the Penal Code, unless the court determines that a finding of factual innocence is not in the interest of justice.

(5) The citation or notice to appear may be held by the prosecuting attorney or issuing agency for future adjudication should the arrestee who received the citation or notice to appear be found.

Amended Sec. 6, Ch. 467, Stats. 2003. Effective January 1, 2004.

### ***Misdemeanor and Infraction Procedure Before Magistrate***

40306. (a) Whenever a person is arrested for a misdemeanor or an infraction and is taken before a magistrate, the arresting officer shall file with the magistrate a complaint stating the offense with which the person is charged.

(b) The person taken before a magistrate shall be entitled to at least five days continuance of his case in which to plead and prepare for trial and the person shall not be required to plead or be tried within the five days unless he waives such time in writing or in open court.

(c) The person taken before a magistrate shall thereupon be released from custody upon his own recognizance or upon such bail as the magistrate may fix.

Amended Ch. 1192, Stats. 1968. Operative January 1, 1969.

### ***Magistrate Unavailable***

40307. When an arresting officer attempts to take a person arrested for a misdemeanor or infraction of this code before a magistrate and the magistrate or person authorized to act for him is not available, the arresting officer shall take the person arrested, without unnecessary delay, before:

(a) The clerk of the magistrate who shall admit him to bail in accordance with a schedule fixed as provided in Section 1269b of the Penal Code, or

(b) The officer in charge of the most accessible county or city jail or other place of detention within the county who

shall admit him to bail in accordance with a schedule fixed as provided in Section 1269b of the Penal Code or may, in lieu of bail, release the person on his written promise to appear as provided in subdivisions (a) through (f) of Section 853.6 of the Penal Code.

Whenever a person is taken into custody pursuant to subdivision (a) of Section 40302 and is arrested for a misdemeanor or infraction of this code pertaining to the operation of a motor vehicle, the officer in charge of the most accessible county or city jail or other place of detention within the county may detain the person arrested for a reasonable period of time, not to exceed two hours, in order to verify his identity.

Amended Ch. 593, Stats. 1974. Effective January 1, 1975.

### ***Payment of Parking Penalty by Mail***

40309. Whenever a notice of parking violation is issued in accordance with Sections 40202 and 40203, or a notice of delinquent parking violation is issued pursuant to Section 40206, the amount fixed as a parking penalty for the violation charged may be forwarded by United States mail to the person authorized to receive a deposit of the parking penalty. Payment of a parking penalty forwarded by mail is effective only when actually received, and the presumption that a letter duly directed and mailed was received does not apply. Section 40512 is applicable to a parking penalty posted pursuant to this section.

Amended Ch. 939, Stats. 1986. Effective January 1, 1987.

### ***Uniform Traffic Penalty Schedule***

40310. The Judicial Council shall annually adopt a uniform traffic penalty schedule which shall be applicable to all nonparking infractions specified in this code, unless in a particular case before the court the judge or authorized hearing officer specifies a different penalty. No penalty shall be established for any infraction in an amount, exclusive of any additional penalty levied pursuant to Section 1464 of the Penal Code, in excess of the amount of the maximum fine pursuant to Section 42001 or 42001.5, and penalties shall be set without regard to residence. In case a traffic penalty is not paid within 20 days following mailing of a notice that the penalty has been assessed, a late charge shall be due in the amount of 50 percent of total initial penalty. In establishing a uniform traffic penalty schedule, the Judicial Council shall classify the offenses into four or fewer penalty categories, according to the severity of offenses, so as to permit convenient notice and payment of the scheduled penalty.

Amended Ch. 696, Stats. 1992. Effective September 15, 1992.

### ***Arraignment for Other Violations***

40311. Whenever a person is arrested under authority of a warrant, the court to which such person is taken shall, with his consent, have jurisdiction to arraign him at that time for any other alleged violation of this code or an ordinance relating to traffic offenses for which he has been issued a written notice to appear in court, notwithstanding the fact that the time for appearance specified in such notice has not yet arrived.

Added Ch. 977, Stats. 1959. Effective September 18, 1959.

### ***Arrest Prohibition: Receipt for Fine***

40312. A peace officer shall not arrest, on the basis of an outstanding warrant arising from a violation of this code, any

person who presents to the peace officer a receipt, from a proper official of the court, indicating that the person has paid the fine for the violation that caused the warrant to be issued. The receipt shall contain sufficient information to identify the name and number of the court issuing the receipt, the date the case was adjudicated or the fine was paid, the case number or docket number, and the violations disposed of.

Added Ch. 290, Stats. 1982. Effective January 1, 1983.

### **Record of Notice of Reexamination**

40313. If a notice of reexamination was issued pursuant to Section 21061, the record of arrest for the traffic violation, or any notice to appear issued under this article, or both, shall include a notation indicating that the notice of reexamination was issued to the arrested person and the driver's license record maintained by the department shall contain a record of the notice of reexamination. The record of the notice of reexamination shall be considered confidential by the department pursuant to Section 1808.5.

Added Ch. 304, Stats. 1986. Effective July 1, 1987.

### **Notice to Appear**

40500. (a) Whenever a person is arrested for any violation of this code not declared to be a felony, or for a violation of an ordinance of a city or county relating to traffic offenses and he or she is not immediately taken before a magistrate, as provided in this chapter, the arresting officer shall prepare in triplicate a written notice to appear in court or before a person authorized to receive a deposit of bail, containing the name and address of the person, the license number of his or her vehicle, if any, the name and address, when available, of the registered owner or lessee of the vehicle, the offense charged and the time and place when and where he or she shall appear. If the arrestee does not have a driver's license or other satisfactory evidence of identity in his or her possession, the officer may require the arrestee to place a right thumbprint, or a left thumbprint or fingerprint if the person has a missing or disfigured right thumb, on the notice to appear. Except for law enforcement purposes relating to the identity of the arrestee, no person or entity may sell, give away, allow the distribution of, include in a database, or create a database with, this print.

(b) The Judicial Council shall prescribe the form of the notice to appear.

(c) Nothing in this section requires the law enforcement agency or the arresting officer issuing the notice to appear to inform any person arrested pursuant to this section of the amount of bail required to be deposited for the offense charged.

(d) Once the arresting officer has prepared the written notice to appear, and has delivered a copy to the arrested person, the officer shall deliver the remaining original and all copies of the notice to appear as provided by Section 40506.

Any person, including the arresting officer and any member of the officer's department or agency, or any peace officer, who alters, conceals, modifies, nullifies, or destroys, or causes to be altered, concealed, modified, nullified, or destroyed, the face side of the remaining original or any copy of a citation that was retained by the officer, for any reason, before it is filed with the magistrate or with a person

authorized by the magistrate or judge to receive a deposit of bail, is guilty of a misdemeanor.

If, after an arrested person has signed and received a copy of a notice to appear, the arresting officer or other officer of the issuing agency, determines that, in the interest of justice, the citation or notice should be dismissed, the arresting agency may recommend, in writing, to the magistrate or judge that the case be dismissed. The recommendation shall cite the reasons for the recommendation and be filed with the court.

If the magistrate or judge makes a finding that there are grounds for dismissal, the finding shall be entered on the record and the infraction or misdemeanor dismissed.

Under no circumstances shall a personal relationship with any officer, public official, or law enforcement agency be grounds for dismissal.

(e) (1) A person contesting a charge by claiming under penalty of perjury not to be the person issued the notice to appear may choose to submit a right thumbprint, or a left thumbprint if the person has a missing or disfigured right thumb, to the issuing court through his or her local law enforcement agency for comparison with the one placed on the notice to appear. A local law enforcement agency providing this service may charge the requester no more than the actual costs. The issuing court may refer the thumbprint submitted and the notice to appear to the prosecuting attorney for comparison of the thumbprints. When there is no thumbprint or fingerprint on the notice to appear, or when the comparison of thumbprints is inconclusive, the court shall refer the notice to appear or copy thereof back to the issuing agency for further investigation, unless the court determines that referral is not in the interest of justice.

(2) Upon initiation of the investigation or comparison process by referral of the court, the court shall continue the case and the speedy trial period shall be tolled for 45 days.

(3) Upon receipt of the issuing agency's or prosecuting attorney's response, the court may make a finding of factual innocence pursuant to Section 530.6 of the Penal Code if the court determines that there is insufficient evidence that the person cited is the person charged and shall immediately notify the Department of Motor Vehicles of its determination. If the Department of Motor Vehicles determines the citation or citations in question formed the basis of a suspension or revocation of the person's driving privilege, the department shall immediately set aside the action.

(4) If the prosecuting attorney or issuing agency fails to respond to a court referral within 45 days, the court shall make a finding of factual innocence pursuant to Section 530.6 of the Penal Code, unless the court determines that a finding of factual innocence is not in the interest of justice.

(5) The citation or notice to appear may be held by the prosecuting attorney or issuing agency for future adjudication should the arrestee who received the citation or notice to appear be found.

Amended Sec. 7, Ch. 467, Stats. 2003. Effective January 1, 2004.

### **Time to Appear**

40501. (a) The time specified in the notice to appear shall be a specific date which is at least 21 days after the arrest, except that the court having jurisdiction over the offense charged may authorize the arresting officer to specify

on the notice that an appearance may be made before the time specified.

(b) In the case of juveniles, the court having jurisdiction over the offense charged may require the arresting officer to indicate on the notice “to be notified” rather than specifying a specific date pursuant to subdivision (a).

Amended Ch. 557, Stats. 1986. Effective August 22, 1986.

### **Place to Appear**

40502. The place specified in the notice to appear shall be any of the following:

(a) Before a magistrate within the county in which the offense charged is alleged to have been committed and who has jurisdiction of the offense and is nearest or most accessible with reference to the place where the arrest is made.

(b) Upon demand of the person arrested, before a judge or other magistrate having jurisdiction of the offense at the county seat of the county in which the offense is alleged to have been committed. This subdivision applies only if the person arrested resides, or the person’s principal place of employment is located, closer to the county seat than to the magistrate nearest or most accessible to the place where the arrest is made.

(c) Before a person authorized to receive a deposit of bail.

The clerk and deputy clerks of the superior court are persons authorized to receive bail in accordance with a schedule of bail approved by the judges of that court.

(d) Before the juvenile court, a juvenile court referee, or a juvenile hearing officer within the county in which the offense charged is alleged to have been committed, if the person arrested appears to be under the age of 18 years. The juvenile court shall by order designate the proper person before whom the appearance is to be made.

In a county that has implemented the provisions of Section 603.5 of the Welfare and Institutions Code, if the offense alleged to have been committed by a minor is classified as an infraction under this code, or is a violation of a local ordinance involving the driving, parking, or operation of a motor vehicle, the citation shall be issued as provided in subdivision (a), (b), or (c); provided, however, that if the citation combines an infraction and a misdemeanor, the place specified shall be as provided in subdivision (d).

If the place specified in the notice to appear is within a county where a department of the superior court is to hold a night session within a period of not more than 10 days after the arrest, the notice to appear shall contain, in addition to the above, a statement notifying the person arrested that the person may appear before such a night session of the court.

Amended Sec. 461, Ch. 931, Stats. 1998. Effective September 28, 1998.

Amended Sec. 603, Ch. 784, Stats. 2002. Effective January 1, 2003.

Amended Sec. 87, Ch. 149, Stats. 2003. Effective January 1, 2004.

### **Speed Charge**

40503. Every notice to appear or notice of violation and every complaint or information charging a violation of any provision of this code regulating the speed of vehicles upon a highway shall specify the approximate speed at which the defendant is alleged to have driven and exactly the prima facie or maximum speed limit applicable to the highway at the time and place of the alleged offense and shall state any other speed limit alleged to have been exceeded if applicable

to the particular type of vehicle or combination of vehicles operated by the defendant.

Amended Ch. 1056, Stats. 1969. Effective November 10, 1969.

### **Delivery of Notice**

40504. (a) The officer shall deliver one copy of the notice to appear to the arrested person and the arrested person in order to secure release must give his or her written promise to appear in court or before a person authorized to receive a deposit of bail by signing two copies of the notice which shall be retained by the officer, and the officer may require the arrested person, if this person has no satisfactory identification, to place a right thumbprint, or a left thumbprint or fingerprint if the person has a missing or disfigured right thumb, on the notice to appear. Thereupon, the arresting officer shall forthwith release the person arrested from custody. Except for law enforcement purposes relating to the identity of the arrestee, no person or entity may sell, give away, allow the distribution of, include in a database, or create a database with, this print.

(b) Any person who signs a written promise to appear with a false or fictitious name is guilty of a misdemeanor regardless of the disposition of the charge upon which he or she was originally arrested.

(c) (1) A person contesting a charge by claiming under penalty of perjury not to be the person issued the notice to appear may choose to submit a right thumbprint, or a left thumbprint if the person has a missing or disfigured right thumb, to the issuing court through his or her local law enforcement agency for comparison with the one placed on the notice to appear. A local law enforcement agency providing this service may charge the requester no more than the actual costs. The issuing court may refer the thumbprint submitted and the notice to appear to the prosecuting attorney for comparison of the thumbprints. When there is no thumbprint or fingerprint on the notice to appear, or when the comparison of thumbprints is inconclusive, the court shall refer the notice to appear or copy thereof back to the issuing agency for further investigation, unless the court finds that referral is not in the interest of justice.

(2) Upon initiation of the investigation or comparison process by referral of the court, the court shall continue the case and the speedy trial period shall be tolled for 45 days.

(3) Upon receipt of the issuing agency’s or prosecuting attorney’s response, the court may make a finding of factual innocence pursuant to Section 530.6 of the Penal Code if the court determines that there is insufficient evidence that the person cited is the person charged and shall immediately notify the Department of Motor Vehicles of its determination. If the Department of Motor Vehicles determines the citation or citations in question formed the basis of a suspension or revocation of the person’s driving privilege, the department shall immediately set aside the action.

(4) If the prosecuting attorney or issuing agency fails to respond to a court referral within 45 days, the court shall make a finding of factual innocence pursuant to Section 530.6 of the Penal Code, unless the court finds that a finding of factual innocence is not in the interest of justice.

(5) The citation or notice to appear may be held by the prosecuting attorney or issuing agency for future

adjudication should the arrestee who received the citation or notice to appear be found.

Amended Sec. 8, Ch. 467, Stats. 2003. Effective January 1, 2004.

### **Copy of Notice**

40505. Whenever any traffic or police officer delivers a notice to appear or notice of violation charging an offense under this code to any person, it shall include all information set forth upon the copy of the notice filed with a magistrate and no traffic or police officer shall set forth on any notice filed with a magistrate or attach thereto or accompany the notice with any written statement giving information or containing allegations which have not been delivered to the person receiving the notice to appear or notice of violation.

Amended Ch. 1056, Stats. 1969. Effective November 10, 1969.

### **Filing Copies**

40506. The officer shall, as soon as practicable, file a copy of the notice with the magistrate or before a person authorized by the magistrate or judge to receive a deposit of bail specified therein, and a copy with the commissioner, chief of police, sheriff or other superior officer of the arresting officer.

### **Continuance**

40506.5. Prior to the date upon which the defendant promised to appear and without depositing bail, the defendant may request a continuance of the written promise to appear. A judge of the superior court may authorize the clerk to grant the continuance.

Amended Sec. 462, Ch. 931, Stats. 1998. Effective September 28, 1998.

Amended Sec. 604, Ch. 784, Stats. 2002. Effective January 1, 2003.

### **Appearance by Counsel**

40507. A written promise to appear in court may be complied with by an appearance by counsel.

### **Violation of Promise to Appear or Pay Fine**

40508. (a) A person willfully violating his or her written promise to appear or a lawfully granted continuance of his or her promise to appear in court or before a person authorized to receive a deposit of bail is guilty of a misdemeanor regardless of the disposition of the charge upon which he or she was originally arrested.

(b) A person willfully failing to pay a lawfully imposed fine for a violation of a provision of this code or a local ordinance adopted pursuant to this code within the time authorized by the court and without lawful excuse having been presented to the court on or before the date the fine is due is guilty of a misdemeanor regardless of the full payment of the fine after that time.

(c) A person willfully failing to comply with a condition of a court order for a violation of this code, other than for failure to appear or failure to pay a fine, is guilty of a misdemeanor, regardless of his or her subsequent compliance with the order.

(d) If a person convicted of an infraction fails to pay a fine or an installment thereof within the time authorized by the court, the court may, except as otherwise provided in this subdivision, impound the person's driver's license and order the person not to drive for a period not to exceed 30 days. Before returning the license to the person, the court shall endorse on the reverse side of the license that the person was

ordered not to drive, the period for which that order was made, and the name of the court making the order. If a defendant with a class C or M driver's license satisfies the court that impounding his or her driver's license and ordering the defendant not to drive will affect his or her livelihood, the court shall order that the person limit his or her driving for a period not to exceed 30 days to driving that is essential in the court's determination to the person's employment, including the person's driving to and from his or her place of employment if other means of transportation are not reasonably available. The court shall provide for the endorsement of the limitation on the person's license. The impounding of the license and ordering the person not to drive or the order limiting the person's driving does not constitute a suspension of the license, but a violation of the order constitutes contempt of court.

Amended Sec. 21, Ch. 451, Stats. 2003. Effective January 1, 2004.

### **Automated County Warrant System: Assessment**

40508.5. (a) In addition to the fees authorized or required by any other provision of law, a county may, by resolution of the board of supervisors, require the courts of that county to impose an assessment of fifteen dollars (\$15) upon every person who violates his or her written promise to appear or a lawfully granted continuance of his or her promise to appear in court or before a person authorized to receive a deposit of bail, or who otherwise fails to comply with any valid court order for a violation of any provision of this code or local ordinance adopted pursuant to this code. This assessment shall apply whether or not a violation of Section 40508 is concurrently charged or a warrant of arrest is issued pursuant to Section 40515.

(b) The courts subject to subdivision (a) shall increase the bail schedule amounts to reflect the amount of the assessment imposed by this section.

(c) If bail is returned, the amount of the assessment shall also be returned, but only if the person did not violate his or her promise to appear or citation following a lawfully granted continuance.

(d) The clerk of the court shall deposit the amounts collected under this section in the county treasury. All money so deposited shall be used first for the development and operation of an automated county warrant system. If sufficient funds are available after appropriate expenditures to develop, modernize, and maintain the automated warrant system, a county may use the balance to fund a warrant service task force for the purpose of serving all bench warrants within the county.

Amended Sec. 2, Ch. 148, Stats. 2002. Effective January 1, 2003.

### **Administrative Assessments**

40508.6. The superior court in any county may establish administrative assessments, not to exceed ten dollars (\$10), for clerical and administrative costs incurred for the following activities:

(a) An assessment for the cost of recording and maintaining a record of the defendant's prior convictions for violations of this code. The assessment shall be payable at the time of payment of a fine or when bail is forfeited for any subsequent violations of this code other than parking, pedestrian, or bicycle violations.

(b) An assessment for all defendants whose driver's license or automobile registration is attached or restricted pursuant to Section 40509 or 40509.5, to cover the cost of notifying the Department of Motor Vehicles of the attachment or restriction.

Amended Sec. 463, Ch. 931, Stats. 1998. Effective September 28, 1998.  
Amended Sec. 604.5, Ch. 784, Stats. 2002. Effective January 1, 2003.

**Notice to Department: Failure to Appear, Pay Fine, or Obey Court Order**

40509. (a) Except as required under subdivision (c) of Section 40509.5, if any person has violated a written promise to appear or a lawfully granted continuance of his or her promise to appear in court or before the person authorized to receive a deposit of bail, or violated an order to appear in court, including, but not limited to, a written notice to appear issued in accordance with Section 40518, the magistrate or clerk of the court may give notice of the failure to appear to the department for any violation of this code, or any violation that can be heard by a juvenile traffic hearing referee pursuant to Section 256 of the Welfare and Institutions Code, or any violation of any other statute relating to the safe operation of a vehicle, except violations not required to be reported pursuant to paragraphs (1), (2), (3), (6), and (7) of subdivision (b) of Section 1803. If thereafter the case in which the promise was given is adjudicated or the person who has violated the court order appears in court or otherwise satisfies the order of the court, the magistrate or clerk of the court hearing the case shall sign and file with the department a certificate to that effect.

(b) If any person has willfully failed to pay a lawfully imposed fine within the time authorized by the court or to pay a fine pursuant to subdivision (a) of Section 42003, the magistrate or clerk of the court may give notice of the fact to the department for any violation, except violations not required to be reported pursuant to paragraphs (1), (2), (3), (6), and (7) of subdivision (b) of Section 1803. If thereafter the fine is fully paid, the magistrate or clerk of the court shall issue and file with the department a certificate showing that the fine has been paid.

(c) (1) Notwithstanding subdivisions (a) and (b), the court may notify the department of the total amount of bail, fines, assessments, and fees authorized or required by this code, including Section 40508.5, which are unpaid by any person.

(2) Once a court has established the amount of a fine and any assessments, and notified the department, the court shall not further enhance or modify that amount.

(3) This subdivision applies only to violations of this code that do not require a mandatory court appearance, are not contested by the defendant, and do not require proof of correction certified by the court.

(d) With respect to a violation of this code, this section is applicable to any court which has not elected to be subject to the notice requirements of subdivision (b) of Section 40509.5.

(e) Any violation subject to Section 40001, which is the responsibility of the owner of the vehicle, shall not be reported under this section.

Amended Sec. 76, Ch. 877, Stats. 1998. Effective January 1, 1999.

**Failure to Comply with a Court Order: Notice to Department**

40509.1. If any person has willfully failed to comply with

a court order, except a failure to appear, to pay a fine, or to attend traffic violator school, which was issued for a violation of this code, the magistrate or clerk of the court may give notice of the fact to the department.

Amended Sec. 77, Ch. 877, Stats. 1998. Effective January 1, 1999.

**Notice to Department: Failure to Appear**

40509.5. (a) Except as required under subdivision (c), if, with respect to an offense described in subdivision (e), any person has violated his or her written promise to appear or a lawfully granted continuance of his or her promise to appear in court or before the person authorized to receive a deposit of bail, or violated an order to appear in court, including, but not limited to, a written notice to appear issued in accordance with Section 40518, the magistrate or clerk of the court may give notice of the failure to appear to the department for any violation of this code, any violation that can be heard by a juvenile traffic hearing referee pursuant to Section 256 of the Welfare and Institutions Code, or any violation of any other statute relating to the safe operation of a vehicle, except violations not required to be reported pursuant to paragraphs (1), (2), (3), (6), and (7) of subdivision (b) of Section 1803. If thereafter the case in which the promise was given is adjudicated or the person who has violated the court order appears in court and satisfies the order of the court, the magistrate or clerk of the court hearing the case shall sign and file with the department a certificate to that effect.

(b) If, with respect to an offense described in subdivision (e), any person has willfully failed to pay a lawfully imposed fine within the time authorized by the court or to pay a fine pursuant to subdivision (a) of Section 42003, the magistrate or clerk of the court may give notice of the fact to the department for any violation, except violations not required to be reported pursuant to paragraphs (1), (2), (3), (6), and (7) of subdivision (b) of Section 1803. If thereafter the fine is fully paid, the magistrate or clerk of the court shall issue and file with the department a certificate showing that the fine has been paid.

(c) If any person charged with a violation of Section 23152 or 23153, or Section 191.5 of the Penal Code, or paragraph (3) of subdivision (c) of Section 192 of that code has violated a lawfully granted continuance of his or her promise to appear in court or is released from custody on his or her own recognizance and fails to appear in court or before the person authorized to receive a deposit of bail, or violated an order to appear in court, the magistrate or clerk of the court shall give notice to the department of the failure to appear. If thereafter the case in which the notice was given is adjudicated or the person who has violated the court order appears in court or otherwise satisfies the order of the court, the magistrate or clerk of the court hearing the case shall prepare and forward to the department a certificate to that effect.

(d) Except as required under subdivision (c), the court shall mail a courtesy warning notice to the defendant by first-class mail at the address shown on the notice to appear, at least 10 days before sending a notice to the department under this section.

(e) If the court notifies the department of a failure to appear or pay a fine pursuant to subdivision (a) or (b), no arrest warrant shall be issued for an alleged violation of



subdivision (a) or (b) of Section 40508, unless one of the following criteria is met:

(1) The alleged underlying offense is a misdemeanor or felony.

(2) The alleged underlying offense is a violation of any provision of Division 12 (commencing with Section 24000), Division 13 (commencing with Section 29000), or Division 15 (commencing with Section 35000), required to be reported pursuant to Section 1803.

(3) The driver's record does not show that the defendant has a valid California driver's license.

(4) The driver's record shows an unresolved charge that the defendant is in violation of his or her written promise to appear for one or more other alleged violations of the law.

(f) Except as required under subdivision (c), in addition to the proceedings described in this section, the court may elect to notify the department pursuant to subdivision (c) of Section 40509.

(g) This section is applicable to courts which have elected to provide notice pursuant to subdivision (b). The method of commencing or terminating an election to proceed under this section shall be prescribed by the department.

(h) Any violation subject to Section 40001, which is the responsibility of the owner of the vehicle, shall not be reported under this section.

Amended Sec. 78.5, Ch. 877, Stats. 1998. Effective January 1, 1999. Supersedes Ch. 828.

### **Deposit of Bail or Parking Penalty**

40510. (a) Prior to the date upon which a defendant promised to appear, or prior to the expiration of any lawful continuance of that date, or upon receipt of information that an action has been filed and prior to the scheduled court date, the defendant may deposit bail with the magistrate or the person authorized to receive a deposit of bail.

(b) For any offense which is not declared to be a felony, a deposit of bail or a penalty may be by a personal check meeting the criteria established in accordance with subdivision (c).

(c) Each court, sheriff, or other agency which regularly accepts deposits of bail or penalties, shall adopt a written policy governing the acceptance of personal checks in payment of bail or penalty deposits. The policy shall permit clerks and other appropriate officers to accept personal checks under conditions which tend to assure the validity of the checks.

(d) The written policy governing the acceptance of personal checks adopted pursuant to subdivision (c) shall provide that the payee of the deposit made by personal check shall be the agency accepting the deposit.

Amended Ch. 1244, Stats. 1992. Effective January 1, 1993.

### **Fixing Bail**

40511. If bail has not been previously fixed and approved by the judges of the court in accordance with a schedule of bail, the magistrate shall fix the amount of bail which in his judgment, in accordance with Section 1275 of the Penal Code, will be reasonable and sufficient for the appearance of the defendant and shall endorse upon the notice a statement signed by him in the form set forth in Section 815a of the Penal Code.

### **Forfeiture of Bail**

40512. (a) (1) Except as specified in paragraph (2), if at the time the case is called for arraignment before the magistrate the defendant does not appear, either in person or by counsel, the magistrate may declare the bail forfeited and may, in his or her discretion, order that no further proceedings be had in the case, unless the defendant has been charged with a violation of Section 23111 or 23112, or subdivision (a) of Section 23113, and he or she has been previously convicted of the same offense, except if the magistrate finds that undue hardship will be imposed upon the defendant by requiring him or her to appear, the magistrate may declare the bail forfeited and order that no further proceedings shall be had in the case.

(2) If the defendant has posted surety bail and the magistrate has ordered the bail forfeited and that no further proceedings shall be had in the case, the bail retains the right to obtain relief from the forfeiture as provided in Section 1305 of the Penal Code if the amount of the bond, money, or property deposited exceeds seven hundred dollars (\$700).

(b) Upon the making of the order that no further proceedings shall be had, all sums deposited as bail shall ( ) <sup>1</sup> be paid into the city or county treasury, as the case may be.

(c) If a guaranteed traffic arrest bail bond certificate has been filed, the clerk of the court shall bill the issuer for the amount of bail fixed by the uniform countywide schedule of bail required under ( ) <sup>2</sup> **subdivision (c) of Section 1269b** of the Penal Code.

(d) Upon presentation by a court of the bill for a fine or bail assessed against an individual covered by a guaranteed traffic arrest bail bond certificate, the issuer shall pay to the court the amount of the fine or forfeited bail ( ) <sup>2</sup> **that** is within the maximum amount guaranteed by the terms of the certificate.

(e) The court shall return the guaranteed traffic arrest bail bond certificate to the issuer upon receipt of payment in accordance with subdivision (d).

Amended Sec. 666, Ch. 538, Stats. 2006. Effective January 1, 2007.

The 2006 amendment added the italicized material, and at the point(s) indicated, deleted the following:

1. "forthwith"
2. "subdivisions (b) and (d) of Section 1296"
3. "which"

### **Optional Bail Forfeiture**

40512.5. (a) Except as specified in subdivision (b), if at the time the case is called for trial the defendant does not appear, either in person or by counsel, and has not requested in writing that the trial proceed in his or her absence, the court may declare the bail forfeited and may, in its discretion, order that no further proceedings be had in the case, or the court may act pursuant to Section 1043 of the Penal Code. However, if the defendant has been charged with a violation of Section 23111 or 23112, or subdivision (a) of Section 23113, and he or she has been previously convicted of a violation of the same section, the court may declare the bail forfeited, but shall issue a bench warrant for the arrest of the person charged, except if the magistrate finds that undue hardship will be imposed upon the defendant by requiring him or her to appear, the magistrate may declare the bail forfeited and order that no further proceedings shall be had in the case.

(b) If the defendant has posted surety bail and the magistrate has ordered the bail forfeited and that no further proceedings shall be had in the case, the bail retains the right to obtain relief from the forfeiture as provided in Section 1305 of the Penal Code if the amount of the bond, money, or property deposited exceeds seven hundred dollars (\$700).

Amended Ch. 524, Stats. 1993. Effective January 1, 1994.

### **Traffic Violator School: Failure to Submit Proof of Completion**

40512.6. If a defendant who elects to attend a traffic violator school in accordance with Section 42005 fails to submit proof of completion within the time ordered by the court or any extension thereof, the court may, following notice to the defendant, order that the fee paid by the defendant be converted to bail and declare the bail forfeited. The bail forfeiture under this section shall be distributed as provided by Section 42007. Upon forfeiture of the bail, the court may order that no further proceedings shall be had in the case.

Added Ch. 90, Stats. 1991. Effective June 30, 1991.

### **Filing of Complaint**

40513. (a) Whenever written notice to appear has been prepared, delivered, and filed with the court, an exact and legible duplicate copy of the notice when filed with the magistrate, in lieu of a verified complaint, shall constitute a complaint to which the defendant may plead “guilty” or “nolo contendere.”

If, however, the defendant violates his or her promise to appear in court or does not deposit lawful bail, or pleads other than “guilty” or “nolo contendere” to the offense charged, a complaint shall be filed that shall conform to Chapter 2 (commencing with Section 948) of Title 5 of Part 2 of the Penal Code, which shall be deemed to be an original complaint, and thereafter proceedings shall be had as provided by law, except that a defendant may, by an agreement in writing, subscribed by him or her and filed with the court, waive the filing of a verified complaint and elect that the prosecution may proceed upon a written notice to appear.

(b) Notwithstanding subdivision (a), whenever the written notice to appear has been prepared on a form approved by the Judicial Council, an exact and legible duplicate copy of the notice when filed with the magistrate shall constitute a complaint to which the defendant may enter a plea and, if the notice to appear is verified, upon which a warrant may be issued. If the notice to appear is not verified, the defendant may, at the time of arraignment, request that a verified complaint be filed. In the case of an infraction violation in which the defendant is a minor, the defendant may enter a plea at the arraignment upon a written notice to appear. Notwithstanding any other provision of law, in the case of an infraction violation, no consent of the minor is required prior to conducting the hearing upon a written notice to appear.

Amended Sec. 145, Ch. 17, Stats. 1997. Effective January 1, 1998.

Amended Sec. 1, Ch. 830, Stats. 2001. Effective January 1, 2002.

### **Issuance of Warrant**

40514. No warrant shall issue on the charge for the arrest of a person who has given his written promise to appear in court or before a person authorized to receive a

deposit of bail, unless he has violated the promise, the lawfully granted continuance of his promise, or has failed to deposit bail, to appear for arraignment, trial or judgment, or to comply with the terms and provisions of the judgment, as required by law.

Amended Ch. 235, Stats. 1979. Effective January 1, 1980.

### **Issuance of Warrant for Violation of Promise to Appear**

40515. (a) When a person signs a written promise to appear or is granted a continuance of his promise to appear at the time and place specified in the written promise to appear or the continuance thereof, and has not posted bail, the magistrate may issue and have delivered for execution a warrant for his arrest within 20 days after his failure to appear before the magistrate, or if the person promises to appear before an officer authorized to accept bail other than a magistrate and fails to do so on or before the date on which he promised to appear, then, within 20 days after the delivery of the written promise to appear by the officer to a magistrate having jurisdiction over the offense.

(b) When the person violates his promise to appear before an officer authorized to receive bail other than a magistrate, the officer shall immediately deliver to a magistrate having jurisdiction over the offense charged the written promise to appear and the complaint, if any, filed by the arresting officer.

Amended Ch. 235, Stats. 1979. Effective January 1, 1980.

### **Expense to Departments**

40516. (a) The expenses incurred by the Department of the California Highway Patrol and the Department of Motor Vehicles in executing any warrant issued as a result of a notice to appear issued by a member of the California Highway Patrol shall be a legal charge against the city or county in which jurisdiction the warrant was issued except where the commissioner authorizes the acceptance of a warrant for execution within 30 days of the date of its issuance.

(b) The commissioner or director shall certify to the Controller the cost of executing warrants on behalf of each city or county under this section. The departments shall be reimbursed for costs as provided in Section 11004.5 of the Revenue and Taxation Code.

(c) The peace officer to whom a warrant has been delivered for execution, upon demand, shall transfer the warrant, if it has not been executed within 30 days of the date of its issuance, to any member of the California Highway Patrol or to the Department of Motor Vehicles for execution.

Amended Ch. 1996, Stats. 1959. Effective September 18, 1959.

### **Automated Traffic Enforcement Systems: Notice to Appear**

40518. (a) Whenever a written notice to appear has been issued by a peace officer or by a qualified employee of a law enforcement agency on a form approved by the Judicial Council for an alleged violation of Section 22451, or, based on an alleged violation of Section 21453, 21455, or 22101 recorded by an automated enforcement system pursuant to Section 21455.5 or 22451, and delivered by mail within 15 days of the alleged violation to the current address of the registered owner of the vehicle on file with the department, with a certificate of mailing obtained as evidence of service,

an exact and legible duplicate copy of the notice when filed with the magistrate shall constitute a complaint to which the defendant may enter a plea. Preparation and delivery of a notice to appear pursuant to this section is not an arrest.

(b) A notice to appear shall contain the name and address of the person, the license plate number of the person's vehicle, the violation charged, including a description of the offense, and the time and place when, and where, the person may appear in court or before a person authorized to receive a deposit of bail. The time specified shall be at least 10 days after the notice to appear is delivered.

Amended Sec. 6, Ch. 54, Stats. 1998. Effective January 1, 1999.

### ***Trial Scheduling; Written Not Guilty Plea***

40519. (a) Any person who has received a written notice to appear for an infraction may, prior to the time at which the person is required to appear, make a deposit and declare the intention to plead not guilty to the clerk of the court named in the notice to appear. The deposit shall be in the amount of bail established pursuant to Section 1269b of the Penal Code, together with any assessment required by Section 42006 of this code or Section 1464 of the Penal Code, for the offense charged, and shall be used for the purpose of guaranteeing the appearance of the defendant at the time and place scheduled by the clerk for arraignment and for trial, and to apply toward the payment of any fine or assessment prescribed by the court in the event of conviction. The case shall thereupon be set for arraignment and trial on the same date, unless the defendant requests separate arraignment.

(b) Any person who has received a written notice to appear may, prior to the time at which the person is required to appear, plead not guilty in writing in lieu of appearing in person. The written plea shall be directed to the court named in the notice to appear and, if mailed, shall be sent by certified or registered mail postmarked not later than five days prior to the day upon which appearance is required. The written plea and request to the court or city agency shall be accompanied by a deposit consisting of the amount of bail established pursuant to Section 1269b of the Penal Code, together with any assessment required by Section 42006 of this code or Section 1464 of the Penal Code, for that offense, which amount shall be used for the purpose of guaranteeing the appearance of the defendant at the time and place set by the court for trial and to apply toward the payment of any fine or assessment prescribed by the court in the event of conviction. Upon receipt of the plea and deposit, the case shall be set for arraignment and trial on the same date, unless the defendant requests separate arraignment. Thereafter, the case shall be conducted in the same manner as if the defendant had appeared in person, had made his or her plea in open court, and had deposited that sum as bail. The court or the clerk of the court shall notify the accused of the time and place of trial by first-class mail postmarked at least 10 days prior to the time set for the trial. Any person using this procedure shall be deemed to have waived the right to be tried within the statutory period.

(c) Any person using the procedure set forth in subdivision (a) or (b) shall be deemed to have given a written promise to appear at the time designated by the court for trial, and failure to appear at the trial shall constitute a misdemeanor.

Amended Ch. 1244, Stats. 1992. Effective January 1, 1993.

### ***Notice to Appear: Affidavit of Non-Liability***

40520. (a) A notice to appear issued pursuant to Section 40518 for an alleged violation recorded by an automatic enforcement system shall contain, or be accompanied by, an affidavit of nonliability and information as to what constitutes nonliability, information as to the effect of executing the affidavit, and instructions for returning the affidavit to the issuing agency.

(b) (1) If a notice to appear is sent to a car rental or leasing company, as the registered owner of the vehicle, the company may return the notice of nonliability pursuant to paragraph (2), if the violation occurred when the vehicle was either leased or rented and operated by a person other than an employee of the rental or leasing company.

(2) If the affidavit of nonliability is returned to the issuing agency by the registered owner within 30 days of the mailing of the notice to appear together with the proof of a written rental agreement or lease between a bona fide renting or leasing company and its customer and that agreement identifies the renter or lessee and provides the driver's license number, name, and address of the renter or lessee, the agency shall cancel the notice for the registered owner to appear and shall, instead, issue a notice to appear to the renter or lessee identified in the affidavit of nonliability.

(c) Nothing in this section precludes an issuing agency from establishing a procedure whereby registered owners, other than bona fide renting and leasing companies, may execute an affidavit of nonliability if the registered owner identifies the person who was the driver of the vehicle at the time of the alleged violation and whereby the issuing agency issues a notice to appear to that person.

Added Sec. 26, Ch. 828, Stats. 1998. Effective January 1, 1999.

### ***Forfeited Bail and Penalty Assessment: Deposit by Mail***

40521. (a) Except when personal appearance is required by the bail schedule established under Section 1269b of the Penal Code, a person to whom a notice to appear has been issued under Section 40500, who intends to forfeit bail and to pay any assessment may forward by United States mail the amount fixed as bail, together with the appropriate amount of any assessment, to the person authorized to receive a deposit of bail. The amounts may be paid in the form of a personal check which meets the criteria established pursuant to subdivision (c) of Section 40510, or a bank cashier's check or a money order. Bail and any assessment shall be paid not later than the day of appearance set forth in the notice to appear or prior to the expiration of any lawful continuance of that date.

(b) Bail forwarded by mail is effective only when the funds are actually received.

(c) Section 40512 is applicable to bail paid pursuant to this section. Upon the making of the order pursuant to Section 40512 that no further proceedings be had, the amount paid as bail shall be paid into the city or county treasury, as the case may be, and the assessment shall be transmitted to the State Treasury in the manner provided in Section 1464 of the Penal Code.

Amended Ch. 1244, Stats. 1992. Effective January 1, 1993.

### ***Proof of Correction: Dismissal of Charge***

40522. Whenever a person is arrested for violations

specified in Section 40303.5 and none of the disqualifying conditions set forth in subdivision (b) of Section 40610 exist, and the officer issues a notice to appear, the notice shall specify the offense charged and note in a form approved by the Judicial Council that the charge shall be dismissed on proof of correction. If the arrested person presents, by mail or in person, proof of correction, as prescribed in Section 40616, on or before the date on which the person promised to appear, the court shall dismiss the violation or violations charged pursuant to Section 40303.5.

Amended Ch. 258, Stats. 1992. Effective January 1, 1993.

#### Article 3. Notice of Violation

##### **Notice to Appear; Reasonable Cause for Issuance**

40600. (a) Notwithstanding any other provision of law, a peace officer who has successfully completed a course or courses of instruction, approved by the Commission on Peace Officer Standards and Training, in the investigation of traffic accidents may prepare, in triplicate, on a form approved by the Judicial Council, a written notice to appear when the peace officer has reasonable cause to believe that any person involved in a traffic accident has violated a provision of this code not declared to be a felony or a local ordinance and the violation was a factor in the occurrence of the traffic accident.

(b) A notice to appear shall contain the name and address of the person, the license number of the person's vehicle, if any, the name and address, when available, of the registered owner or lessee of the vehicle, the offense charged, and the time and place when and where the person may appear in court or before a person authorized to receive a deposit of bail. The time specified shall be at least 10 days after the notice to appear is delivered.

(c) The preparation and delivery of a notice to appear pursuant to this section is not an arrest.

(d) For purposes of this article, a peace officer has reasonable cause to issue a written notice to appear if, as a result of the officer's investigation, the officer has evidence, either testimonial or real, or a combination of testimonial and real, that would be sufficient to issue a written notice to appear if the officer had personally witnessed the events investigated.

(e) As used in this section, "peace officer" means any person specified under Section 830.1 or 830.2 of the Penal Code, or any reserve police officer or reserve deputy sheriff listed in Section 830.6 of the Penal Code, with the exception of members of the California National Guard.

(f) A written notice to appear prepared on a form approved by the Judicial Council and issued pursuant to this section shall be accepted by any court.

Amended Sec. 12, Ch. 292, Stats. 2003. Effective January 1, 2004.

##### **Issuance of Warrant**

40604. (a) If the person charged with the offense has not signed a promise to appear, no warrant for arrest may be issued following the filing of the written notice to appear issued pursuant to Section 40600, until 15 days after a notice of the filing has been served upon the person by personal delivery or by mail, addressed to the person at the address shown in the accident report.

(b) The notice shall contain the name and address of the person, the license number of the vehicle involved, the name

and address, when available, of the registered owner or lessee of the vehicle, the offense shown on the written notice to appear, and the approximate time of the commission of the offense. The notice shall inform the person that, unless he or she appears in the court designated in the notice within 10 days after the service of the notice and answers the charges, a warrant will be issued for his or her arrest.

(c) Proof of service shall be made by the affidavit of any person over 18 years of age making the service showing the time, place, and manner of service and facts showing that the service was made in accordance with this section. If service is made by mail, no warrant for arrest may be issued until 14 days after the deposit of the notice of filing in the mail.

Amended Ch. 1243, Stats. 1992. Effective September 30, 1992.

#### Article 4. Notice to Correct Violation

(Added Ch. 1350, Stats. 1978. Operative July 1, 1979.)

##### **Notice to Correct Violation**

40610. (a) (1) Except as provided in paragraph (2), if, after an arrest, accident investigation, or other law enforcement action, it appears that a violation has occurred involving a registration, license, all-terrain vehicle safety certificate, or mechanical requirement of this code, and none of the disqualifying conditions set forth in subdivision (b) exist and the investigating officer decides to take enforcement action, the officer shall prepare, in triplicate, and the violator shall sign, a written notice containing the violator's promise to correct the alleged violation and to deliver proof of correction of the violation to the issuing agency.

(2) If any person is arrested for a violation of Section 4454, and none of the disqualifying conditions set forth in subdivision (b) exist, the arresting officer shall prepare, in triplicate, and the violator shall sign, a written notice containing the violator's promise to correct the alleged violation and to deliver proof of correction of the violation to the issuing agency. In lieu of issuing a notice to correct violation pursuant to this section, the officer may issue a notice to appear, as specified in Section 40522.

(b) Pursuant to subdivision (a), a notice to correct violation shall be issued as provided in this section or a notice to appear shall be issued as provided in Section 40522, unless the officer finds any of the following:

- (1) Evidence of fraud or persistent neglect.
- (2) The violation presents an immediate safety hazard.
- (3) The violator does not agree to, or cannot, promptly correct the violation.

(c) If any of the conditions set forth in subdivision (b) exist, the procedures specified in this section or Section 40522 are inapplicable, and the officer may take other appropriate enforcement action.

(d) Except as otherwise provided in subdivision (a), the notice to correct violation shall be on a form approved by the Judicial Council and, in addition to the owner's or operator's address and identifying information, shall contain an estimate of the reasonable time required for correction and proof of correction of the particular defect, not to exceed 30 days, or 90 days for the all-terrain vehicle safety certificate.

Amended Sec. 27, Ch. 908, Stats. 2004. Effective January 1, 2005.

**Proof of Correction of Violation: Transaction Fee**

40611. (a) Upon proof of correction of an alleged violation of Section 12500 or 12951, or any violation cited pursuant to Section 40610, or upon submission of evidence of financial responsibility pursuant to subdivision (e) of Section 16028, the clerk shall collect a ten dollar (\$10) transaction fee for each case. The fee shall be deposited by the clerk in accordance with Section 68084 of the Government Code, and allocated monthly as follows:

(1) Thirty-three percent shall be transferred to the local governmental entity in whose jurisdiction the citation was issued for deposit in the general fund of the entity.

(2) Thirty-four percent shall be transferred to the State Treasury for deposit in the State Penalty Fund established by Section 1464 of the Penal Code.

(3) Thirty-three percent shall be deposited in the county general fund.

(b) No fee shall be imposed pursuant to this section if the violation notice is processed only by the issuing agency and no record of the action is transmitted to the court.

Amended Sec. 21, Ch. 880, Stats. 1999. Effective January 1, 2000.

**Copy of Notice**

40612. An exact, legible copy of the notice to correct shall be delivered to the alleged violator at the time he or she signs such notice.

Added Ch. 1350, Stats. 1978. Operative July 1, 1979.

**Misdemeanor to Sign with False or Fictitious Name**

40614. Any person who signs a notice to correct or a certificate of correction with a false or fictitious name is guilty of a misdemeanor.

Added Ch. 1350, Stats. 1978. Operative July 1, 1979.

**Misdemeanor to Willfully Fail to Correct or Deliver Proof**

40616. Any person willfully violating a written promise to correct or willfully failing to deliver proof of correction of violation is guilty of a misdemeanor. Proof of correction may consist of a certification by an authorized representative of one of the following agencies that the alleged violation has been corrected:

(a) Brake, lamp, smog device, or muffler violations may be certified as corrected by any station licensed to inspect and certify for the violation pursuant to Article 8 (commencing with Section 9889.15) of Chapter 20.3 of Division 3 of the Business and Professions Code and Section 27150.2.

(b) Driver license and registration violations may be certified as corrected by the Department of Motor Vehicles or by any clerk or deputy clerk of a court.

(c) Any violation may be certified as corrected by a police department, the California Highway Patrol, sheriff, marshal, or other law enforcement agency regularly engaged in enforcement of the Vehicle Code.

Amended Ch. 361, Stats. 1983. Effective January 1, 1984.

**Signed Notice as Complaint**

40618. Whenever proof of correction of violation is not received by the issuing agency in accordance with Section 40610, the issuing agency may deliver the signed promise to the court having jurisdiction of the violation with a certification that no proof of correction has been received. If prepared on a form approved by the Judicial Council, the promise under Section 40610, together with the certification

under this section, shall constitute a complaint to which the defendant may enter a plea, and upon which a warrant may be issued if the complaint is verified.

Added Ch. 1350, Stats. 1978. Operative July 1, 1979.

**CHAPTER 3. ILLEGAL EVIDENCE****Article 1. Prosecutions Under Code****Vehicle and Uniform Used by Officers**

40800. Every traffic officer on duty for the exclusive or main purpose of enforcing the provisions of Division 10 or 11 of this code shall wear a full distinctive uniform, and if the officer while so on duty uses a motor vehicle, it must be painted a distinctive color specified by the commissioner.

This section does not apply to an officer assigned exclusively to the duty of investigating and securing evidence in reference to any theft of a vehicle or failure of a person to stop in the event of an accident or violation of Section 23109 or in reference to any felony charge, or to any officer engaged in serving any warrant when the officer is not engaged in patrolling the highways for the purpose of enforcing the traffic laws.

Amended Ch. 202, Stats. 1961. Effective September 15, 1961.

**Speed Trap Prohibition**

40801. No peace officer or other person shall use a speed trap in arresting, or participating or assisting in the arrest of, any person for any alleged violation of this code nor shall any speed trap be used in securing evidence as to the speed of any vehicle for the purpose of an arrest or prosecution under this code.

**Speed Traps**

40802. (a) A "speed trap" is either of the following:

(1) A particular section of a highway measured as to distance and with boundaries marked, designated, or otherwise determined in order that the speed of a vehicle may be calculated by securing the time it takes the vehicle to travel the known distance.

(2) A particular section of a highway with a prima facie speed limit that is provided by this code or by local ordinance under subparagraph (A) of paragraph (2) of subdivision (a) of Section 22352, or established under Section 22354, 22357, 22358, or 22358.3, if that prima facie speed limit is not justified by an engineering and traffic survey conducted within five years prior to the date of the alleged violation, and enforcement of the speed limit involves the use of radar or any other electronic device that measures the speed of moving objects. This paragraph does not apply to a local street, road, or school zone.

(b) (1) For purposes of this section, a local street or road is defined by the latest functional usage and federal-aid system maps submitted to the federal Highway Administration, except that when these maps have not been submitted, or when the street or road is not shown on the maps, a "local street or road" means a street or road that primarily provides access to abutting residential property and meets the following three conditions:

(A) Roadway width of not more than 40 feet.

(B) Not more than one-half of a mile of uninterrupted length. Interruptions shall include official traffic control signals as defined in Section 445.

(C) Not more than one traffic lane in each direction.

(2) For purposes of this section “school zone” means that area approaching or passing a school building or the grounds thereof that is contiguous to a highway and on which is posted a standard “SCHOOL” warning sign, while children are going to or leaving the school either during school hours or during the noon recess period. “School zone” also includes the area approaching or passing any school grounds that are not separated from the highway by a fence, gate, or other physical barrier while the grounds are in use by children if that highway is posted with a standard “SCHOOL” warning sign.

(c) (1) When all of the following criteria are met, paragraph (2) of this subdivision shall be applicable and subdivision (a) shall not be applicable:

(A) When radar is used, the arresting officer has successfully completed a radar operator course of not less than 24 hours on the use of police traffic radar, and the course was approved and certified by the Commission on Peace Officer Standards and Training.

(B) When laser or any other electronic device is used to measure the speed of moving objects, the arresting officer has successfully completed the training required in subparagraph (A) and an additional training course of not less than two hours approved and certified by the Commission on Peace Officer Standards and Training.

(C) (i) The prosecution proved that the arresting officer complied with subparagraphs (A) and (B) and that an engineering and traffic survey has been conducted in accordance with subparagraph (B) of paragraph (2). The prosecution proved that, prior to the officer issuing the notice to appear, the arresting officer established that the radar, laser, or other electronic device conformed to the requirements of subparagraph (D).

(ii) The prosecution proved the speed of the accused was unsafe for the conditions present at the time of alleged violation unless the citation was for a violation of Section 22349, 22356, or 22406.

(D) The radar, laser, or other electronic device used to measure the speed of the accused meets or exceeds the minimal operational standards of the National Traffic Highway Safety Administration, and has been calibrated within the three years prior to the date of the alleged violation by an independent certified laser or radar repair and testing or calibration facility.

(2) A “speed trap” is either of the following:

(A) A particular section of a highway measured as to distance and with boundaries marked, designated, or otherwise determined in order that the speed of a vehicle may be calculated by securing the time it takes the vehicle to travel the known distance.

(B) (i) A particular section of a highway or state highway with a prima facie speed limit that is provided by this code or by local ordinance under subparagraph (A) of paragraph (2) of subdivision (a) of Section 22352, or established under Section 22354, 22357, 22358, or 22358.3, if that prima facie speed limit is not justified by an engineering and traffic survey conducted within one of the following time periods, prior to the date of the alleged violation, and enforcement of the speed limit involves the use of radar or any other

electronic device that measures the speed of moving objects:

(I) Except as specified in subclause (II), seven years.

(II) If an engineering and traffic survey was conducted more than seven years prior to the date of the alleged violation, and a registered engineer evaluates the section of the highway and determines that no significant changes in roadway or traffic conditions have occurred, including, but not limited to, changes in adjoining property or land use, roadway width, or traffic volume, 10 years.

(ii) This subparagraph does not apply to a local street, road, or school zone.

Amended Sec. 1, Ch. 1037, Stats. 1998. Effective January 1, 1999.

Amended Sec. 18, Ch. 1008, Stats. 1999. Effective January 1, 2000.

Amended Sec. 3, Ch. 521, Stats. 2000. Effective January 1, 2001.

### **Speed Trap Evidence**

40803. (a) No evidence as to the speed of a vehicle upon a highway shall be admitted in any court upon the trial of any person in any prosecution under this code upon a charge involving the speed of a vehicle when the evidence is based upon or obtained from or by the maintenance or use of a speedtrap.

(b) In any prosecution under this code of a charge involving the speed of a vehicle, where enforcement involves the use of radar or other electronic devices which measure the speed of moving objects, the prosecution shall establish, as part of its prima facie case, that the evidence or testimony presented is not based upon a speedtrap as defined in paragraph (2) of subdivision (a) of Section 40802.

(c) When a traffic and engineering survey is required pursuant to paragraph (2) of subdivision (a) of Section 40802, evidence that a traffic and engineering survey has been conducted within five years of the date of the alleged violation or evidence that the offense was committed on a local street or road as defined in paragraph (2) of subdivision (a) of Section 40802 shall constitute a prima facie case that the evidence or testimony is not based upon a speedtrap as defined in paragraph (2) of subdivision (a) of Section 40802.

Amended Sec. 147, Ch. 124, Stats. 1996. Effective January 1, 1997.

### **Testimony Based on Speed Trap**

40804. (a) In any prosecution under this code upon a charge involving the speed of a vehicle, any officer or other person shall be incompetent as a witness if the testimony is based upon or obtained from or by the maintenance or use of a speed trap.

(b) Every officer arresting, or participating or assisting in the arrest of, a person so charged while on duty for the exclusive or main purpose of enforcing the provisions of Divisions 10 and 11 is incompetent as a witness if at the time of such arrest he was not wearing a distinctive uniform, or was using a motor vehicle not painted the distinctive color specified by the commissioner.

This section does not apply to an officer assigned exclusively to the duty of investigating and securing evidence in reference to any theft of a vehicle or failure of a person to stop in the event of an accident or violation of Section 23109 or in reference to any felony charge or to any officer engaged in serving any warrant when the officer is not engaged in patrolling the highways for the purpose of enforcing the traffic laws.

Amended Ch. 84, Stats. 1978. Effective January 1, 1979.

### **Admission of Speed Trap Evidence**

40805. Every court shall be without jurisdiction to render a judgment of conviction against any person for a violation of this code involving the speed of a vehicle if the court admits any evidence or testimony secured in violation of, or which is inadmissible under this article.

### **Police Reports**

40806. In the event a defendant charged with an offense under this code pleads guilty, the trial court shall not at any time prior to pronouncing sentence receive or consider any report, verbal or written, of any police or traffic officer or witness of the offense without fully informing the defendant of all statements in the report or statement of witnesses, or without giving the defendant an opportunity to make answer thereto or to produce witnesses in rebuttal, and for such purpose the court shall grant a continuance before pronouncing sentence if requested by the defendant.

### **Use of Evidence Regarding Departmental Action**

40807. No record of any action taken by the department against a person's privilege to operate a motor vehicle, nor any testimony regarding the proceedings at, or concerning, or produced at, any hearing held in connection with such action, shall be admissible as evidence in any court in any criminal action.

No provision of this section shall in any way limit the admissibility of such records or testimony as is necessary to enforce the provisions of this code relating to operating a motor vehicle without a valid driver's license or when the driving privilege is suspended or revoked, the admissibility of such records or testimony in any prosecution for failure to disclose any matter at such a hearing when required by law to do so, or the admissibility of such records and testimony when introduced solely for the purpose of impeaching the credibility of a witness.

Added Ch. 804, Stats. 1977. Effective January 1, 1978.

### **Speed Trap Evidence**

40808. Subdivision (d) of Section 28 of Article I of the California Constitution shall not be construed as abrogating the evidentiary provisions of this article.

Added Ch. 538, Stats. 1992. Effective January 1, 1993.

## **Article 2. Civil Actions**

### **Effect of Convictions**

40830. In either of the following circumstances a violation of any provision of this code does not establish negligence as a matter of law, but in any civil action under either of the circumstances negligence must be proved as a fact without regard to the violation. The circumstances under which this section applies are either:

(a) Where violation of the provision was required by a law of the federal government or by any rule, regulation, directive or order of any agency of the federal government, the violation of which is subject to penalty under an act of Congress or by any valid order of military authority.

(b) Where violation of the provision was required in order to comply with any regulation, directive, or order of the Governor promulgated under the California Emergency Services Act.

Amended Ch. 438, Stats. 1971. Operative May 3, 1972.

### **Effect of Speed Conviction**

40831. In any civil action proof of speed in excess of any prima facie limit declared in Section 22352 at a particular time and place does not establish negligence as a matter of law but in all such actions it shall be necessary to establish as a fact that the operation of a vehicle at the excess speed constituted negligence.

### **Suspension or Revocation of Driving Privilege**

40832. No record of the suspension or revocation of the privilege to operate a motor vehicle by the department, nor any testimony of or concerning or produced at the hearing terminating in the suspension or revocation, shall be admissible as evidence in any court in any civil action.

### **Report or Action of Department as Evidence**

40833. Neither the report required by Sections 16000, 16001, 16002, or 16003, the action taken by the department pursuant to Chapter 1 of Division 7 (commencing at Section 16000), the findings, if any, of the department upon which action is based, nor the security filed as provided in that chapter shall be referred to in any way, or be any evidence of the negligence or due care of any party, at the trial of any action at law to recover damages.

### **Effect of Conviction**

40834. A judgment of conviction for any violation of this code or of any local ordinance relating to the operation of a motor vehicle or a finding reported under Section 1816 shall not be res judicata or constitute a collateral estoppel of any issue determined therein in any subsequent civil action.

Added Ch. 1530, Stats. 1963. Effective September 20, 1963.

## **CHAPTER 3.5. EVIDENCE**

### **Electronic Verification of Vehicle Ownership**

40900. Notwithstanding any other provision of law, a verification by telegraph, teletype, facsimile transmission, or any other electronic device, from the department, of ownership of a vehicle registered pursuant to this code, is admissible in evidence as proof of ownership of the vehicle in any proceeding involving a parking violation of this code, or any local parking ordinance adopted pursuant to this code.

Amended Ch. 13, Stats. 1991. Effective February 13, 1991.

### **Trials: Infractions: Documentary Evidence**

40901. (a) A court, pursuant to this section, may by rule provide for the trial of any alleged infraction involving a violation of this code or any local ordinance adopted pursuant to this code.

(b) The rules governing the trials may provide for testimony and other relevant evidence to be introduced in the form of a notice to appear issued pursuant to Section 40500 and, notwithstanding Division 10 (commencing with Section 1200) of the Evidence Code, a business record or receipt.

(c) Prior to the entry of a waiver of constitutional right pursuant to any rules adopted under this section, the court shall inform the defendant in writing of the nature of the proceedings and of his or her right to confront and cross-examine witnesses, to subpoena witnesses on his or her behalf, and to hire counsel at his or her own expense. The court shall ascertain that the defendant knowingly and

voluntarily waives his or her right to be confronted by the witnesses against him or her, to subpoena witnesses in his or her behalf, and to hire counsel on his or her behalf before proceeding.

(d) In any jurisdiction with a non-English speaking population exceeding 5 percent of the total population of the jurisdiction in any one language, a written explanation of the procedures and rights under this section shall be available in that language.

(e) Except as set forth above, nothing contained herein shall be interpreted to permit the submission of evidence other than in accordance with the law, nor to prevent courts from adopting other rules to provide for trials in accordance with the law.

Amended Sec. 148, Ch. 124, Stats. 1996. Effective January 1, 1997.

### ***Trial by Written Declaration***

40902. (a) (1) The court, pursuant to this section, shall, by rule, provide that the defendant may elect to have a trial by written declaration upon any alleged infraction, as charged by the citing officer, involving a violation of this code or any local ordinance adopted pursuant to this code, other than an infraction cited pursuant to Article 2 (commencing with Section 23152) of Chapter 12 of Division 11.

(2) The Judicial Council may adopt rules and forms governing trials by declaration in accordance with this section. Any rule or form adopted by the Judicial Council pursuant to this paragraph shall supersede any local rule of a court adopted pursuant to paragraph (1).

(b) If the defendant elects to have a trial by written declaration, the defendant shall, at the time of submitting that declaration, submit bail in the amount established in the uniform traffic penalty schedule pursuant to Section 40310. If the defendant is found not guilty or if the charges are otherwise dismissed, the amount of the bail shall be promptly refunded to the defendant.

(c) Notwithstanding Division 10 (commencing with Section 1200) of the Evidence Code, the rules governing trials by written declaration may provide for testimony and other relevant evidence to be introduced in the form of a notice to appear issued pursuant to Section 40500, a business record or receipt, a sworn declaration of the arresting officer, or a written statement or letter signed by the defendant.

(d) If the defendant is dissatisfied with a decision of the court in a proceeding pursuant to this section, the defendant shall be granted a trial de novo.

Amended Sec. 1, Ch. 265, Stats. 1998. Effective January 1, 1999.

### ***Failure to Appear: Trial by Written Declaration***

40903. (a) Any person who fails to appear as provided by law may be deemed to have elected to have a trial by written declaration upon any alleged infraction, as charged by the citing officer, involving a violation of this code or any local ordinance adopted pursuant to this code.

(b) Notwithstanding Division 10 (commencing with Section 1200) of the Evidence Code, testimony and other relevant evidence may be introduced in the form of a notice to appear issued pursuant to Section 40500, a notice of parking violation issued pursuant to Section 40202, a notice of delinquent parking violation issued pursuant to Section 40206, a business record or receipt, a sworn declaration of the

arresting officer, or a written statement or letter signed by the defendant.

Added Ch. 696, Stats. 1992. Effective September 14, 1992.

## **CHAPTER 4. PRESUMPTIONS**

### ***Speed Restriction Signs***

41100. In any action involving the question of unlawful speed of a vehicle upon a highway which has been signposted with speed restriction signs of a type complying with the requirements of this code, it shall be presumed that existing facts authorize the erection of the signs and that the prima facie speed limit on the highway is the limit stated on the signs. This presumption may be rebutted.

### ***Official Signs and Traffic Control Devices***

41101. (a) Whenever a traffic sign or traffic control device is placed in a position approximately conforming to the requirements of this code, it shall be presumed to have been placed by the official act or direction of lawful authority, unless the contrary is established by competent evidence.

(b) Any sign or traffic control device placed pursuant to this code and purporting to conform to the lawful requirements pertaining to it shall be presumed to comply with the requirements of this code unless the contrary is established by competent evidence.

### ***Train of Vehicles***

41104. In any case, involving an accident or otherwise, where any rear component of a train of vehicles fails to follow substantially in the path of the towing vehicle while moving upon a highway, the vehicle shall be presumed to have been operated in violation of Section 21711.

Added Ch. 44, Stats. 1959. Effective September 18, 1959.

## **CHAPTER 5. DEFENSES**

### ***Prior Conviction or Acquittal***

41400. Whenever any person is charged with a violation of this code, it is a sufficient defense to such charge if it appears that in a criminal prosecution in another state or by the Federal Government, founded upon the act or omission in respect to which he is on trial, he has been convicted or acquitted.

### ***Federal Law***

41401. No person shall be prosecuted for a violation of any provision of this code if the violation was required by a law of the federal government, by any rule, regulation, directive or order of any agency of the federal government, the violation of which is subject to penalty under an act of Congress, or by any valid order of military authority.

Amended Ch. 78, Stats. 1973. Effective January 1, 1974.

### ***Emergency Services Act***

41402. No person shall be prosecuted for a violation of any provision of this code when violation of such provision is required in order to comply with any regulation, directive, or order of the Governor promulgated under the California Emergency Services Act.

Amended Ch. 438, Stats. 1971. Operative May 3, 1972.

### ***Prior Conviction: Constitutional Validity***

41403. (a) In any proceedings to have a judgment of



conviction of a violation of Section 14601, 14601.1, 14601.2, 23152, or 23153, or Section 23103 as specified in Section 23103.5, which was entered in a separate proceeding, declared invalid on constitutional grounds, the defendant shall state in writing and with specificity wherein the defendant was deprived of the defendant's constitutional rights, which statement shall be filed with the clerk of the court and a copy served on the court that rendered that judgment and on the prosecuting attorney in the present proceedings at least five court days prior to the hearing thereon.

(b) Except as provided in subdivision (c), the court shall, prior to the trial of any pending criminal action against the defendant wherein the separate conviction is charged as such, hold a hearing, outside of the presence of the jury, in order to determine the constitutional validity of the charged separate conviction issue. At the hearing the procedure, the burden of proof, and the burden of producing evidence shall be as follows:

(1) The prosecution shall initially have the burden of producing evidence of the separate conviction sufficient to justify a finding that the defendant has suffered that separate conviction.

(2) After the production of evidence required by paragraph (1), the defendant then has the burden of proof by a preponderance of the evidence that the defendant's constitutional rights were infringed in the separate proceeding at issue. If the separate conviction sought to be invalidated is based upon a plea of guilty or nolo contendere, the defendant shall provide the court with evidence of the prior plea, including the court docket, written waivers of constitutional rights executed by the defendant, and transcripts of the relevant court proceedings at the time of the entry of the defendant's plea. These records shall be provided to the defendant without cost to him or her, when the defendant is represented by the public defender or counsel appointed pursuant to Section 987.2 of the Penal Code.

(3) If the defendant bears this burden successfully, the prosecution shall have the right to produce evidence in rebuttal.

(4) The court shall make a finding on the basis of the evidence thus produced and shall strike from the accusatory pleading any separate conviction found to be constitutionally invalid.

(c) If the defendant fails to comply with the notice requirement of subdivision (a) or fails to produce the evidence required by paragraph (2) of subdivision (b), the court shall hear the motion at the time of sentencing in lieu of continuing the trial, unless good cause is shown for failure to provide notice pursuant to subdivision (a) or produce the evidence required by paragraph (2) of subdivision (b), in which case the court shall grant a continuance of the trial for a reasonable period. The procedure, burden of proof, and burden of producing evidence as provided in subdivision (b) shall apply regardless of when the motion is heard.

Amended and renumbered Ch. 1585, Stats. 1984. Effective January 1, 1985. Supersedes Ch. 1205. Prior Section 23208.

## CHAPTER 6. NONPROSECUTION OF VIOLATIONS

(Added Ch. 1163, Stats. 1970. Effective November 23, 1970.)

### **Nonfelony Offenses of Persons in Custody**

41500. (a) No person shall be subject to prosecution for any nonfelony offense arising out of the operation of a motor vehicle or violation of this code as a pedestrian which is pending against him at the time of his commitment to the custody of the Director of Corrections or the Department of the Youth Authority.

(b) Notwithstanding any other provisions of law to the contrary, no driver's license shall be suspended or revoked, nor shall the issuance or renewal of a license be refused as a result of a pending nonfelony offense occurring prior to the time a person was committed to the custody of the Director of Corrections or the Department of the Youth Authority or as a result of a notice received by the department pursuant to subdivision (a) of Section 40509 when the offense which gave rise to the notice occurred prior to the time a person was committed to the custody of the Director of Corrections or the Department of the Youth Authority.

(c) The department shall remove from its records any notice received by it pursuant to subdivision (a) of Section 40509 upon receipt of satisfactory evidence that a person was committed to the custody of the Director of Corrections or the Department of the Youth Authority after the offense which gave rise to the notice occurred.

(d) The provisions of this section shall not apply to any nonfelony offense wherein the department is required by this code to immediately revoke or suspend the privilege of any person to drive a motor vehicle upon receipt of a duly certified abstract of the record of any court showing that the person has been convicted of that nonfelony offense.

(e) The provisions of subdivisions (a), (b), and (c) do not apply to any offense committed by a person while he is temporarily released from custody pursuant to law or while he is on parole.

(f) The provisions of subdivisions (a), (b), and (c) do not apply if the pending offense is a violation of Section 23103, 23152, or 23153.

Amended Ch. 950, Stats. 1992. Effective January 1, 1993.

### **Traffic School Attendance**

41501. (a) The court may order a continuance of a proceeding against a person, who receives a notice to appear in court for a violation of any statute relating to the safe operation of a vehicle, in consideration for attendance at a licensed school for traffic violators, a licensed driving school, or any other court-approved program of driving instruction, and, after that attendance and pursuant to Section 1803.5 or 42005, the court may dismiss the complaint under the following conditions:

(1) If the offense is alleged to have been committed within 12 months of another offense that was dismissed under this section, the court may order the continuance and, after the attendance, dismiss the complaint. The court may order attendance at a licensed school for traffic violators that offers a program of at least 12 hours of instruction.

(2) If the offense is not alleged to have occurred within 18 months of another offense that was dismissed under this section, the court may order the continuance and, after the

attendance, dismiss the complaint if the attendance is at any of the types of schools or programs that the court directed pursuant to Section 42005 at the time of ordering the continuance.

(b) This section shall become operative on September 20, 2005.

Amended Sec. 19, Ch. 1008, Stats. 1999. Effective January 1, 2000.  
Amended Sec. 30, Ch. 952, Stats. 2004. Effective January 1, 2005. Operative September 20, 2005.

## CHAPTER 7. ARREST QUOTAS

### **Arrest Quota Defined**

41600. For purposes of this chapter, “arrest quota” means any requirement regarding the number of arrests made, or the number of citations issued, by a peace officer, or parking enforcement employee, or the proportion of those arrests made and citations issued by a peace officer or parking enforcement employee, relative to the arrests made and citations issued by another peace officer or parking enforcement employee, or group of officers or employees.

Added Ch. 1111, Stats. 1976. Effective January 1, 1977.  
Amended Sec. 1, Ch. 105, Stats. 2002. Effective January 1, 2003.

### **Citation Defined**

41601. For purposes of this chapter, “citation” means a notice to appear, notice of violation, or notice of parking violation.

Added Ch. 1111, Stats. 1976. Effective January 1, 1977.

### **Regents of the University of California**

41601.5. For purposes of this chapter, “agency” includes the Regents of the University of California.

Added Sec. 2, Ch. 105, Stats. 2002. Effective January 1, 2003.

### **Arrest Quota Prohibited**

41602. No state or local agency employing peace officers or parking enforcement employees engaged in the enforcement of this code or any local ordinance adopted pursuant to this code, may establish any policy requiring any peace officer or parking enforcement employees to meet an arrest quota.

Amended Sec. 3, Ch. 105, Stats. 2002. Effective January 1, 2003.

### **Evaluation of Peace Officers Performance**

41603. No state or local agency employing peace officers or parking enforcement employees engaged in the enforcement of this code shall use the number of arrests or citations issued by a peace officer or parking enforcement employees as the sole criterion for promotion, demotion, dismissal, or the earning of any benefit provided by the agency. Those arrests or citations, and their ultimate dispositions, may only be considered in evaluating the overall performance of a peace officer or parking enforcement employees. An evaluation may include, but shall not be limited to, criteria such as attendance, punctuality, work safety, complaints by citizens, commendations, demeanor, formal training, and professional judgment.

Amended Sec. 4, Ch. 105, Stats. 2002. Effective January 1, 2003.

## CHAPTER 8. CONSOLIDATED DISPOSITION

### **Consolidated Disposition of Offenses**

41610. (a) Whenever any person who is in custody enters a guilty plea to any infraction or misdemeanor under

this code and there is outstanding any warrant of arrest for a violation of this code or a local ordinance adopted pursuant to this code that is filed in any court within the same county, the defendant may elect to enter a guilty plea to any of these charged offenses of which the court has a record, except offenses specified in subdivision (b). The court shall sentence the defendant for each of the offenses for which a guilty plea has been entered pursuant to this section, and shall notify the appropriate court or department in each affected judicial district of the disposition. After receiving that notice of disposition, the court in which each complaint was filed shall prepare and transmit to the department any certification required by applicable provisions of Section 40509 as if the court had heard the case.

(b) Subdivision (a) does not authorize entry of a guilty plea as specified in that subdivision to any offense for which a notice of parking violation has been issued, nor to any offense specified in Section 14601.2, 14601.3, 20002, 23103, 23104, 23152, or 23153, subdivision (a) of Section 14601, or subdivision (a) of Section 14601.1.

Added Ch. 989, Stats. 1983. Effective January 1, 1984.